Supreme Court, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-711

SOUTHEASTERN COMMUNITY COLLEGE,

Petitioner,

v.

FRANCES B. DAVIS,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 27, 1978
CERTIORARI GRANTED JANUARY 8, 1979

IN THE
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Sept. 8, 1975	Complaint filed.
Nov. 5, 1975	Answer filed.
Oct. 18, 1976	Motion to amend complaint filed.
Oct. 18, 1976	Trial before District Court.
Dec. 27, 1976	District Court's findings of fact and conclusions of law filed (dated Dec. 22, 1976).
Jan. 5, 1977	Notice of appeal filed.
March 28, 1978	Judgment and opinion of Fourth Circuit entered.
June 29, 1978	Petition for rehearing and suggestion for rehearing en banc denied.
Oct. 27, 1978	Petition for writ of certiorari filed.
Jan. 8, 1979	Order of Supreme Court granting certiorari.

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF NORTH CAROLINA

Fayetteville Division

FRANCES B DAVIS,	)	
Plaintiff	)	
Vs.	)	COMPLAINT
SOUTHEASTERN COMMUNITY		75-0041-Civ-3
Defendant		

Now comes the Plaintiff before the Court and complaining of the Defendant, says and alleges:

PARAGRAPH ONE

The Plaintiff is a citizen and resident of Robeson County, North Carolina.

PARAGRAPH TWO

The Defendant is a tax-supported public educational institution created and existing by the Legislature of the State of North Carolina and operating by and through a duly appointed and qualified Board of Trustees as authorized by the General Statutes of the State of North Carolina, and maintaining its principal place of business in Columbus County, North Carolina.

PARAGRAPH THREE

That the Plaintiff is a duly qualified Licensed Practical Nurse, having been granted such professional license by the State of North Carolina in 1967, which license is currently in good standing. Further, the Plaintiff is presently actively engaged and employed in the professional nursing practice pursuant to and as an exercise of the privilege granted by such license.

PARAGRAPH FOUR

That the Defendant Institution is a State-supported Community College offering educational benefits to residents of the several counties surrounding Columbus County, North Carolina in various fields of vocational and professional instruction. That among the educational programs so offered by the Defendant Institution is an Associate Degree Nursing Program.

PARAGRAPH FIVE

That during the year 1973, the Plaintiff made application unto the said Defendant Institution for admission as a student during the 1973-74 School Term, preparatory to entering the Associate Degree Nursing Program in September, 1974. Plaintiff was accepted as a student for 1973-74, with her progress in general educational courses to be evaluated during the said school year to determine her eligability for acceptance into the Nursing Degree Program.

PARAGRAPH SIX

That pursuant to such acceptance, the Plaintiff regularly attended classroom instruction, accomplished all work assigned to her, and successfully completed her schedule of classes for the 1973-74 school term.

PARAGRAPH SEVEN

That for many years the Plaintiff has had a bilateral moderately severe sensorineural hearing loss, which has been improved to within the outer limits of normal hearing levels by the use of a hearing aid specially prescribed and custom fitted to her.

PARAGRAPH EIGHT

That such auditory condition existed prior to and at the time Plaintiff was trained and licensed as a "Licensed Practical Nurse," during the numerous years which she has been actively engaged in the practice of the nursing profession, and at the time Plaintiff made application for admission to the Defendant Institution. That the Plaintiff made full and complete disclosure of such condition unto the Defendant Institution by including such information within her written and oral applications for admission as a student in the Nursing Program.

PARAGRAPH NINE

That during the school year 1973-74, and at such a time when the Plaintiff was maintaining satisfactory grade levels, the Defendant Institution advised the Plaintiff that it was giving further consideration to her application for admission into the Associate Nursing Degree Program, such re-evaluation being based solely upon her auditory condition.

PARAGRAPH TEN

That pursuant thereto, and in accordance with specific instructions by the Defendant Institution, Plaintiff took various medical tests and provided Defendant with numer-

ous letters explaining her condition, all of which reflected Plaintiff's hearing capability to be within the outer limits of normal, and further reflected Plaintiff adequately performed the professional duties as a Licensed Practical Nurse.

PARAGRAPH ELEVEN

That in spite of such a showing of capabilities by the Plaintiff as to personal and professional competence, the Defendant arbitrarily and capriciously, and acting in a discriminatory manner toward the Plaintiff, denied the Plaintiff admission to further educational programs as a candidate for the Associate Nursing Degree. Such denial was based solely upon Defendant's prejudice toward the auditory condition of the Plaintiff.

PARAGRAPH TWELVE

That the educational benefits denied to this Plaintiff by the discriminatory action of the Defendant Institution were rights, privileges and immunities secured to her by the Constitution and by the Law of the United States of America, and constitute a denial of equal protection under the law, and could not be withheld from her without due process of law.

PARAGRAPH THIRTEEN

That the rejection and termination of Plaintiff from the Associate Degree Nursing Program was accomplished by the Defendant Institution pursuant to, and under color of law of the State of North Carolina, and in violation and contrary to rights of the Plaintiff protected by the Constitution and the Laws of the United States, thereby giving rise to an action on behalf of this Plaintiff under 42 USC Section 1893.

PARAGRAPH FOURTEEN

That the Defendant Institution effected the discriminatory practice upon this Plaintiff in that:

(1) Qualifications of applicants for admission to Community Colleges are established by the State Board of Education pursuant to authority granted unto them by N.C.G.S. 115A-5, and application of such standards is delegated by N.C.G.S. 115A-(4) unto the Board of Trustees of the several community colleges, including this Defendant Institution.

Pursuant to such exercise of delegated authority, the Defendant Institution applied such statutory power in an aribtrary manner so as unlawfully exclude this Plaintiff from further educational benefits.

(2) Further, the Defendant Institution invoked provisions of N.C.G.S. 90, Article 9, entitled "NURSE PRACTICE ACT," in that the Defendant Institution intimated that even if Plaintiff successfully completed educational requirements, she could not be licensed as "Registered Nurse" because of her physical handicap. That such statements were false and deceitful and the untruthfulness of same was known unto the Defendant Institution in that said Defendant Institution full well knew the Plaintiff was already licensed as a "LICENSED PRACTICAL NURSE" by the North Carolina Board of Nursing and that the statutory requirements touching upon physical competency to practice nursing are the same

for both "Licensed Practical Nurses" and "Registered Nurses."

PARAGRAPH FIFTEEN

That the discriminatory practices perpetrated upon this Plaintiff, as hereinbefore alleged, were conducted by agents and employees of the Defendant Institution acting within the scope of their employment as designated and directed by the Board of Trustees pursuant to their statutory authority.

PARAGRAPH SIXTEEN

That the wrongful actions of the Defendant Institution have caused Plaintiff to expend a great deal of time, effort and money to comply with the Defendant's requests for tests, evaluations, documents and letters of reference, and to attend numerous meetings and conferences. That such wrongful action on the part of the Defendant Institution has caused the Plaintiff to suffer extreme and painful mental anguish and stress. That Plaintiff has been damaged by the wrongful actions of the Defendant Institution in the amount of Twenty Thousand and No/100 ($20,000.00) Dollars.

WHEREFORE, the Plaintiff prays that the Court:

(1) Order the Defendant Institution to enroll and admit Plaintiff as a student and candidate in the Associate Degree Nursing Program, and to bestow upon Plaintiff all privileges attendant thereto.

(2) Allow the Plaintiff to have and recover damages of the Defendant Institution in the amount of

Twenty Thousand And No/100 ($20,000.00) dollars.

(3) Tax all costs sgainst the Defendant Institution.

(4) Grant such other and further relief as to this Court shall seem just and proper.

MOSES & DIEHL

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

[Caption omitted in printing]

MOTION TO AMEND COMPLAINT

ALLOWED IN OPEN COURT ON DATE OF TRIAL, WITHOUT OBJECTION

Now comes the Plaintiff, through counsel, and does hereby pray that the Court allow the Plaintiff to amend PARAGRAPH THIRTEEN of the Complaint by the addition of the following language and allegation:

That further, jurisdiction lies with the United States District Court under and by virtue of the terms and provisions of 28 USC SEC. 1337:

> The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

The foregoing language is to be in addition to and not in place of that language already contained in PARAGRAPH THIRTEEN of the Complaint.

WHEREFORE, the Plaintiff prays that the Court allow the amendment of the Complaint to incorporate the foregoing language and allegation into PARAGRAPH THIRTEEN.

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NORTH CAROLINA

[Caption omitted in printing]

ANSWER

The defendant, answering the Complaint filed herein, says:

FIRST DEFENSE:

The Complaint fails to allege sufficient facts upon which relief can be granted and motion in thereupon made for a dismissal of the action.

SECOND DEFENSE:

The Complaint fails to allege sufficient facts to raise a federal question which would give the Federal Court jurisdiction over the matter or person of the Defendant, and motion is thereupon made for a dismissal of the action.

THIRD DEFENSE:

That Plaintiff has failed to exhaust the remedies available to her in the State courts and administrative remedies provided by the Defendant Institution, and motion to dismiss is thereupon made.

FOURTH DEFENSE:

1. Defendant admits paragraph one.
2. The Defendant admits paragraph two.
3. The Defendant does not have sufficient knowledge or information with which to answer paragraph three and the allegations therein are denied.
4. Paragraph four is admitted.

5. Answering paragraph five, it is admitted that Plaintiff made application as a student during the year 1973. Except as admitted, all other allegations therein are denied. By way of further answer, Defendant says that Plaintiff had a serious hearing difficulty detected early in April, 1973, and was accepted as a college student to take general college work. The evaluation of said Plaintiff for further study was made upon her academic work as well as physical eligibility and other related matters. It is specifically denied that she was admitted preparatory to entering the Associate Degree Nursing Program.
6. Answering paragraph six, it is admitted that Plaintiff regularly attended classroom instruction and did work assigned to her. Further answering said paragraph, however, Defendant says that Plaintiff's hearing defect was a noticeable problem in her classroom experience.
7. Paragraph seven is denied. Answering said paragraph, Defendant says that Plaintiff did not possess normal hearing but with a hearing aide on her right side and her ability to read lips, she was able to communicate with other people. Her impairment was a bilateral, sensori-nueral hearing loss with a moderately severe loss on the right ear and a severe hearing loss on the left ear. In addition, she had a speech discrimination loss which factors made Plaintiff unacceptable as a candidate for the Associate Degree Nursing Program.

8. Answering paragraph eight, the Defendant does not have sufficient knowledge or information with respect to Plaintiff's auditory condition prior to being licensed as a Practical Nurse and said allegations are, therefore, denied. It is further denied that Plaintiff made full and complete disclosure of her condition to the College in connection with her application for admission. By way of further answer, Defendant says that no statements appear on Plain-

tiff's application for admission made in March, 1973, nor any references to same and that her hearing impairment was discovered and ascertained from observations and references after she commenced her classroom work. Except as admitted, all other allegations are denied.

9. Paragraph nine is denied. Further answering same, Defendant says that the whole condition of a student, mentally and physically, are taken into account in determining her capacity and eligibility for special training and that Plaintiff was not a capable and eligible candidate. That her condition was studied and evaluated by an audiologist at Duke Hospital and the medical reports were studied and evaluated by the North Carolina Board of Nursing and her eligibility for the Associate Degree Nursing Program was not determined subjectively or arbitrarily by the College but from a composite of expert study, examination and evaluation.

10. Answering paragraph ten, it is admitted that Plaintiff took various medical tests with respect to her hearing impairment. Except as admitted the other allegations therein are denied. Further answering same, Defendant says that all medical tests and evaluations performed with respect to Plaintiff ascertained her inability and incapacity to serve in the nursing program and, therefore, ineligible as a candidate for admission.

11. Paragraph eleven is untrue and denied. By way of further answer thereto, the Defendant says the exhaustive efforts were made to determine Plaintiff's eligibility for admission to the Associate Degree Nursing Program and all such tests proved her unfitness and inability therefor and that the Defendant did not act in an arbitrary or capricious manner nor was it discriminatory or prejudice toward the auditory condition of the Plaintiff.

12. Paragraph 12 is denied. Further answering same, the Defendant says no federal question is raised for that there is no constitutional requirement for admission to the Associate Degree Nursing Program, but the eligibility of candidates therefor are determined objectively and equally upon their academic, mental and physical capabilities. No constitutional rights, therefore, are either infringed or abused and no privileges or immunities denied the Plaintiff.

13. Paragraph 13 is denied.

14. Paragraph 14 and each sub-section thereunder (1) and (2) are untrue and denied. Further answering same, Defendant says that N.C.G.S. 115A-5 provides for the administration of state institutions by the State Board of Education and N.C.G.S. 115A-4 provides for the establishment and transfer of institutions and that nothing in either of said statutory provisions is material or relevant to Plaintiff's alleged claim for that the Defendant was acting lawfully and properly in the exercise of its lawful and statutory duty and responsibility to carry out properly its Associate Degree Nursing Program and no rule or regulation pertaining thereto was either discriminatory or prejudicial to the Plaintiff. Further answering same, the said Plaintiff was not excluded by the Defendant institution from further educational benefits but was offered further opportunity in fields of endeavor for which she was qualified.

15. Paragraph fifteen is denied.

16. Paragraph sixteen is denied.

WHEREFORE, Defendant demands judgment that the Plaintiff's Complaint be dismissed, that it recover its cost

in this action, and that it be granted any and all other relief to which it may appear to be entitled.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION
CIVIL ACTION NO. 75-0041-Civ-3

[Caption omitted in printing]

ORDER ON FINAL PRE-TRIAL CONFERENCE

Pursuant to the provisions of the Rules of Federal Civil Procedure, a Final Pre-Trial Conference was held in the above entitled cause on the 22nd day of September and the 7th day of October, 1976.

I

It is stipulated and agreed between the parties that the Plaintiff is a citizen and resident of Robeson County, North Carolina, and the Defendant is a tax supported public educational institution created and existing by the Legislature of the State of North Carolina, and operating by and through the duly appointed and qualified Board of Trustees, and maintaining its principal place of business in Columbus County, North Carolina.

II. The Basis for JURISDICTION In This Matter Is Contested.

PLAINTIFF'S CONTENTIONS

Plaintiff contends jurisdiction of this matter is based upon a violation of 29 U.S.C. 794 and a denial of equal protection of the laws actionable under 42 U.S.C. Section 1983.

DEFENDANT'S CONTENTIONS

1. Defendant contends no constitutional question has been raised under 14 U.S.C. Section 1983 in that admission to an academic program (associate degree in nursing) is not a property right protected by the Constitution.

2. Defendant contends that Plaintiff failed to exhaust the remedies available to her in the State Courts and the Administrative Remedies provided by the Defendant Institution.

3. Defendant contends that the standards and objectives established by the College for admission to Associate Degree Nursing Program were provided to the Plaintiff and other students and were fairly and uniformly administered, and

4. Defendant institution did not act arbitrarily or capriciously toward the Plaintiff but denied her admission to the Associate Degree Nursing Program because of a severe hearing impairment which was provided for in the selection process.

III

There are no motions pending except as deal with the jurisdictional questions.

IV. SUMMARY OF ULTIMATE FACTS CLAIMED BY:

PLAINTIFF'S CONTENTIONS –

The Plaintiff contends she was a Licensed Practical Nurse who enrolled as a student at Southeastern Community College preparatory to entering the Associate Nursing Degree Program offered by the college. She further contends that she has suffered a bilateral moderately severe sensorineural hearing loss for many years, which has been improved to within the outer limits of normal hearing levels by the use of a hearing aid specifically prescribed and custom fitted to her. The Plaintiff further contends that she was arbitrarily denied admission to the Defendants' Associate Nursing Degree Program by virtue of her handicap, when in fact her hearing loss would not preclude her from successfully completing the educational program offered by the Defendant College.

DEFENDANT'S CONTENTIONS –

The Defendant contends that the Plaintiff had a congenital hearing loss on both ears for many years and that she suffered a significant hearing loss with a better understanding of speech on her right ear than her left ear. That the Plaintiff wore a hearing aid because of the significant bilateral hearing loss; that her hearing loss was associated with a marked speech discrimination loss and that she relied upon lip reading as well as amplified sound. That the hearing loss of the Plaintiff made her unacceptable in the Associate Nursing Degree Program and that the rejection of her application was a logical exercise of the authority of the college to control the admission of students into various programs offered by the college.

V. STIPULATION OF FACTS

1. The Plaintiff is a citizen and resident of Robeson County, North Carolina.

2. The Defendant is a tax supported Public Educational Institution created and existing by the Legislature of the State of North Carolina and operating by and through a duly appointed and qualified Board of Trustees, as authorized by the General Statutes of the State of North Carolina, and maintaining its principal place of business in Columbus County, North Carolina.

3. The Plaintiff is a duly qualified Licensed Practical Nurse, having been granted such professional license by the state of North Carolina in 1967, and which license is currently in good standing. Further, the Plaintiff has from time to time been actively engaged and employed in the exercise of the privilege granted to her as a licensed practical nurse.

4. The Defendant Institution is a State supported Community College offering educational benefits to residents of the several counties surrounding Columbus County, North Carolina, in various fields of vocational and professional instruction. That the Plaintiff resides in one of the counties served by the Defendant College. That further, among the educational programs offered by the Defendant Institution is an Associate Degree in Nursing.

5. The Defendant institution receives various forms of Federal financial assistance.

6. That during 1973, the Plaintiff made application to the Defendant Institution for admission as a student in 1973-74 school term preparatory to entering the Associate Degree Nursing Program in September, 1974.

7. The Plaintiff successfully completed her schedule of classes for the 1973-74 school term.

8. That because of a hearing impairment, the Plaintiff was denied admission into the Associate Degree Program by the Defendant Institution.

9. That prior to August 8, 1974, the Plaintiff met with several members of the College faculty and administration including the Dean for Student Development, Dan W. Moore, and Dr. W. R. McCarter, President of the College, in an effort to obtain a reversal of the earlier decision denying her admission into the Associate Degree Nursing Program. That such meeting resulted in the letter of August 8, 1974 from Dean Dan W. Moore advising the Plaintiff that the College would not reconsider her application.

VI. EXHIBITS

The following is a list of all the known exhibits of the Plaintiff and Defendant to be offered in the trial:

* * *

VII. THE PLAINTIFF MAY CALL THE FOLLOWING WITNESSES TO TESTIFY:

* * *

VIII. THE DEFENDANT MAY CALL THE FOLLOWING WITNESSES TO TESTIFY:

* * *

IX.

It is stipulated that trial by jury was not desired or demanded by either party, and the case is ready for trial on the non-jury docket.

X.

It is stipulated there are no other actions presently pending in this or any other Court that involve common questions of law and are presently known to either of the parties.

XI.

It is stipulated and agreed that the contested issues of fact are:

PLAINTIFF CONTENDS –

1. Was the Plaintiff eligible for admission as a student in the Associate Nursing Degree Program of Southeastern Community College in view of her hearing impediment?

2. If so, did the Defendant discriminate unlawfully against the Plaintiff in denying her admission?

3. Is the Plaintiff entitled to injunctive relief against the Defendant by virtue of such discrimination?

4. Is the Plaintiff entitled to recover damages from the Defendant Institution by reason of such discrimination?

5. How much, if anything, is the Plaintiff entitled to recover by way of such damages?

DEFENDANT CONTENDS –

1. Does the Complaint allege sufficient facts upon which a constitutional question is presented?

2. Did the Plaintiff exhaust the administrative remedies provided by Defendant institution upon being denied admission to the Associate Degree Nursing Program?

3. Did the Admission Criteria for Associate Degree Nursing Program unfairly and unlawfully discriminate against the Plaintiff in the denial of her admission?

4. Did the Defendant institution act in an arbitrary, capricious or discriminatory manner toward the Plaintiff in denying her admission to the Associate Degree Nursing Program?

5. If so, is the Plaintiff entitled to admission to the Associate Degree Nursing Program?

6. What amount of damages, if any, is the Plaintiff entitled to recover of the Defendant institution?

XII.

The contested issues of law to be tried by the Court are:

PLAINTIFF CONTENDS –

PLAINTIFF'S CONTENTIONS

1. Are the provisions of 29 U.S.C. Section 794 applicable, and, if so, has the Defendant Institution unlawfully discriminated against the Plaintiff?

2. Did the Defendant Institution deny the Plaintiff equal protection of the laws in denying her admission to the Associate Degree Nursing Program?

3. Did the Defendant Institution act under color of state law in the denial of admission to the Plaintiff?

DEFENDANT CONTENDS

DEFENDANT'S CONTENTIONS

1. Are the allegations in Plaintiff's Complaint sufficient to present a constitutional question?

2. If so, did the Plaintiff fail to exhaust her administrative remedies provided by the Defendant Institution?

3. Does the Plaintiff have a property right in the admission to the academic program of Defendant institution guaranteed by the Constitution?

4. Was the Plaintiff denied equal protection of the laws under the Fourteenth Amendment in respect to her appllcation for admission to an academic program and denial of admission by Defendant institution?

5. Was the denial of Plaintiff's admission to the Associate Degree Nursing Program by Defendant institution arbitrary and discriminatory?

6. If so, is the Plaintiff entitled to admission to the Associate Degree Nursing Program of the Defendant institution?

7. What amount of damages, if any, if Plaintiff entitled to recover of Defendant institution?

XIII.

Counsel for the parties have discussed settlement, and prospects of same appear to be remote. Counsel agree to notify the Clerk of Court in the event of any material change in settlement prospects.

XIV.

Counsel for the parties announce that all witnesses are available for trial and the case is in all respects ready for trial. The probable length of trial is estimated to be between one (1) and two (2) days.

This final pre-trial order, when signed by counsel for the parties, and approved by the Court, together with any memorandum hereinafter entered by agreement of the parties and accepted by the Court, shall constitute the final pre-trial order, and will control the subsequent course of the action unless modified by consent of the parties and the court, or by an order of the Court, to prevent manifest injustice.

/s/Philip A. Diehl
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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

[Caption omitted in printing]

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This is an action brought by plaintiff under the provisions of 42 U.S.C. §1983 alleging that the defendant institution denied plaintiff equal protection of the law and due process in denying her admission to the Associate Degree Nursing Program of defendant institution, and under 28 U.S.C. §794 alleging that plaintiff was discriminated against by the defendant institution in denying her admission because of a hearing disability. After hearing and considering the testimony adduced at trial, and considering the various pleadings, exhibits, and submissions taken into evidence, including a review of the court's notes taken at the time of trial, upon the credible evidence presented, the court publishes the following:

FINDINGS OF FACT

1. The court has jurisdiction of the subject matter of this claim pursuant to 28 U.S.C. §1343(3).

* * *

[Remainder reprinted in full in Pet. App. 12a.]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

FRANCES B. DAVIS,
Plaintiff,

v.

CIVIL ACTION NO.
75-0041-CIV-3

SOUTHEASTERN COMMUNITY COLLEGE,
Defendant.

NOTICE OF APPEAL

Now comes the Plaintiff, through Counsel, and in accordance with the Rules of Federal Procedure, does by these presents give notice of appeal from the findings of fact, conclusions of law, and judgment rendered herein to the United States Court of Appeals for the Fourth Circuit.

This the 5th day of January, 1977.

MOSES, DIEHL & PATE
ATTORNEYS FOR THE PLAINTIFF

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[Filed Jan. 6, 1977]

TRANSCRIPT

APPEARANCES AT TRIAL

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BEFORE THE HON. ROBERT W. HEMPHILL, United States District Judge

This case was called for trial on the 18th day of October, 1976 at the United States District Court for the Eastern District of North Carolina at Fayetteville, North Carolina.

Plaintiff opened her evidence with the admission of Plaintiff's Trial Exhibits 1 through 20, and upon the acceptance of same by the Court, Plaintiff rested.

Defendant moved for dismissal, which motion was taken under advisement by the Court and dealt with in the opinion.

Defendant introduced into evidence, and the Court admitted, Defendant's Trial Exhibits 1 through 3. The Defendant then offered the testimony of several witnesses.

* * *

8 ANNIE ODUM HAYES,

was called as a witness by and on behalf of the Defendant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Williamson:

Q. Would you, please, state your name for the Court?
A. It's Annie Odum, but it's Hayes now.

9 Q. You have remarried since you were at Southeastern?
A. That's right.

Q. You are now Annie Odum Hayes? A. Right.

Q. Do you know the Plaintiff, Mrs. Frances Davis?
A. Yes.

Q. Did you have an occasion back in Marsh of 1974 to have any type of conversation or contact with her?
A. On March 18, 1974, I did a pre-admission interview with Mrs. Davis.

Q. Miss Odum, at that time were you associated with Southeastern Community College? A. Yes, I was.

Q. In what capacity? A. I had lead responsibility for teaching the maternal health nursing and the psychiatric health nursing.

Q. And how long had you been with the college at that time? A. Since August 1, 1969.

Q. Did you know Mrs. Davis prior to that time?
A. No, I didn't.

Q. Did you know that she had been a student there at Southeastern Community College during the preceding year, that is during the academic year 1973-1974? A. Yes, I did.

10 Q. Now Miss Odum, did you have an opportunity to review the application for admission of Mrs. Davis to the Associate Degree of Nursing program at the college?

A. Are you asking me whether I had like looked through the folder and had information about, you know, the grades and this sort of thing?

Q. Yes. Was part of your responsibility at that time to interview applicants for this nursing program? A. Yes, it was.

Q. And did you interview other applicants besides Mrs. Davis? A. Yes, I did.

Q. Now what did the interview with Mrs. Davis consist of? A. We had a form in which we went by so that the interviews would be uniform and I believe there is probably a copy of this, and we used this with each applicant who came in seeking admission to the Associate Degree Nursing program. In fact, this was worked up over a period of years with a lot of work and input from the faculty as well as the student personnel services people and whenever an applicant came in, of course, we had this form to go by and some of the things that we looked at when we talked to the person was things other than, of course, the admissions group looked at grades while we were there, but

11 that was not the object of this. We had a personal interview with the person and made some estimate of suitability for doing the nursing, particularly, the clinical students.

Q. Mrs. Hayes, I hand you what has already been identified and introduced as Defendant's Exhibit 24 and I will ask you if you would, to look at that and tell me whether or not that is the overall estimate of suitability for the associate degree of nursing program, which you made as a result of your interview with Mrs. Davis? A. That is right.

Q. You have a copy of that? A. I have a copy of that.

Q. Would you relate to the court, please, Ma'am, the areas in which you made the estimate for suitability for

the ABN program? A. Communications is one big area, the ability to communicate to the patient as well as other members of the health team and as a part of this interview I did note that Mrs. Davis had a hearing difficulty. During the course of our conversation I knew it was necessary for me to repeat questions to her at least on two occasions.

Q. At that time – A. She had difficulty hearing me just on close together or one to one.

12 Q. Did you have before you her records at the college, her application for admission and other records? A. I had her application for admission but I did not have a copy of any previous interview or anything, so I did not know that she had a hearing difficulty until I talked to her that day.

Q. How did you notice that she did have a hearing difficulty and what, if any, particular recognition did you make of her problem at that time? A. Well, she told me that she had a hearing difficulty and that she wore a hearing aid and we talked about that, and I mentioned, I made a comment to her that, you know, the fact that I had had to repeat to her I thought it would be difficult for patients attempting to communicate with her.

Q. Do you know of your own knowledge how many applicants there were that particular year for admission to this program?

MR. DIEHL: Objection?

A. I don't know the exact number.

THE COURT: What's the grounds of the objection? Suppose she knew?

MR. DIEHL: All right, Your Honor.

THE COURT: She said she didn't know, but suppose she knew. Go ahead.

13 Q. You said you did not know? A. I knew that there were quite a few, but I don't know how many.

Q. Do you know, approximately, how many people that you interviewed for the program that year, Mrs. Hayes? A. I do not remember the exact number of people that I interviewed, but I know it was several. We took turns, you know, we had so many days or so many hours designated as office hours and then the secretary simply made appointments for us during that time and the whole staff took, you know, had an opportunity to interview people during this time.

Q. Mrs. Hayes, did you teach in the Associate Degree Nursing Program? A. Yes, I did.

Q. Was there an academic or classroom phase and also a clinical phase? A. Yes.

Q. What did the problem that you observed about Mrs. Davis' hearing, what did that suggest to you as a problem that would be in her training program? A. Well, I believe Mrs. Davis told me that she did depend on lip reading to assist her and I think one of the times we were talking I was not looking directly at her when we were talking and I did repeat what I said. I had a responsibility

14 for the maternal nursing and, of course, some of the time, particularly, in the labor and delivery rooms you have to wear a mask and I did not think – I thought she would have difficulty in attempting to do that part of the clinical.

The other area in which I had a lead responsibility in was the psychiatric mental health and, of course, the communication is the basic thing there, too, the interaction between the nurse and the patient.

Q. And it was upon these observations that you did not recommend her for the ADN program? A. That's right. I discussed it with her that day as a matter of fact.

Q. The final selection process, that is whether she was admitted or not admitted, was not your responsibility?

A. No, it was not and this was just one part of the selection process.

MR. WILLIAMSON: Thank you.

CROSS EXAMINATION

By Mr. Diehl:

Q. Mrs. Hayes, in the interview that you set forth with Mrs. Davis, that took place on March 18, 1974; is that correct? A. That's correct.

Q. Mrs. Davis had been enrolled as a student in Southeastern Community College for the 1973-74 academic school year; is that also correct? A. As far as I remember. I didn't always have access to how long the person had been there when I did this interview.

Q. You did have access to her application, however; did you not? A. I had access to her application but I had not seen – the day I interviewed her I had not seen previous interviews or information pertaining to her.

Q. Did the access to the records of her application include the medical records? A. I don't remember seeing medical records that day.

Q. You, however, knew of your own knowledge that Mrs. Davis had a hearing impairment; did you not? A. I do not recall that I knew until I talked with Mrs. Davis that day and she told me that she had some hearing difficulty and wore a hearing aid.

Q. Had you had any conversations with either Mrs. Riggio or Mrs. Ashley prior to that date about Mrs. Davis' hearing impairment? A. I had not talked with Mrs. Ashley and I had not read her report.

Q. And what about Mrs. Riggio? A. I had talked with Mrs. Riggio, but it was simply in reference to the interviewing process and we did not discuss Mrs. Davis.

Q. Now Mrs. Hayes, at the time that you conducted this interview, you, yourself, were involved in the teaching program for the ADN degree; is that correct? A. That's correct.

Q. Now from your direct testimony, do I understand that you foresaw problems primarily in a clinical area of

training? A. That was the basis for my, what I wrote on this report.

Q. And Mrs. Hayes, in the clinical aspects of training under the ADN program, is it not required that the student work under the direct supervision of an instructor? A. Not under the direct supervision a hundred percent of the time. For instance, you would have more than one student in the clinical area.

Q. But the students would at the same time be under the overall supervision of an instructor; is that correct? A. Under the overall supervision, yes, but one of the important things that we have to do in working with students is to determine whether they are safe as far as the practicing the nursing skills and so on when we are not in the room as well as while we are directly involved with the supervision.

Q. Are you saying then that Frances Davis then would have required additional supervision from the other students in the clinical portion? A. No, I think that she would have required more supervision from the instructor.

Q. In other words, there would have been more supervision required because of her hearing impairment than he would give to an ordinary student who did not have such a handicap? A. I would think that. I would also question her ability to function in the area that I mentioned as far as in the delivery and labor rooms when you wear a mask and sometimes it is difficult to hear even without a hearing aid or hearing thing.

Q. Now you were also concerned as to whether or not she would work as a registered work; is that correct? A. As a part of this interview I also noticed that she really did not have – she was a little vague about, you know, what she was going to do because she was currently not working as a nurse and that was another thing that I made a notation about when I did the interview.

Q. You knew she was a licensed practical nurse?
A. Yes, I did.

Q. Are you an RN or LPN? A. I'm a registered nurse.

Q. Registered nurse. Now Mrs. Hayes, the distinction
18 between the requirements for a licensed practical nurse and a registered nurse are in the amount of theory and training only; is that correct, as far as licensing qualifications? A. It has to do with theory and training, yes.

Q. And as far as the phsyical qualifications, Mrs. Davis was at the time of your interview and had for several years prior to that time been licensed as a practical nurse?
A. However, she stated she had not worked as a licensed practical nurse except to do a little bit of private duty and was not currently working.

Q. At that time I believe she told you she was involved in the operation of a family dry cleaning business because of some illnesses; is that correct? A. Yes, she did say she was helping with her family business.

Q. Now Mrs. Hayes, you have no reason to believe by virtue of your interview that Mrs. Davis was unable to complete the educational levels necessary for the ADN program; do you? A. No, I didn't have any reason to believe she would be unable to do that.

Q. And the basis for your decision or your evaluation that she should not be accepted was because of her hearing
19 impairment and the difficulty it might give in her being licensed as an RN; is that correct? A. That is correct.

MR. DIEHL: No other questions.

REDIRECT EXAMINATION

By Mr. Williamson:

Q. Mrs. Hayes, what is the difference, the practical differences in duties to be performed by a registered nurse and those that would be performed by an LPN?

MR. DIEHL: If your Honor, please, at this time the Plaintiff would object. The basis of this suit is not whether or not the Plaintiff could practice as a registered nurse but whether or not she is entitled to the educational programs offered by the college which are two different things.

THE COURT: Didn't you ask her about that?

MR. DIEHL: I asked her about the physical qualifications or the – the qualifications, if Your Honor, please, in dealing with the throy for the licensing of an RN and an LPN. But I never got involved with the actual practice of the nursing profession from the standpoint of an LPN or RN.

THE COURT: Well, you asked her if she was a licensed nurse and she said, "I am a registered nurse. She was an LPN. She stated she had not worked much as an LPN, but had done some private duty. At the time she was working
20 in a dry cleaning business. I had no reason to believe she would not pass the work academically." I paraphrased that.

I'll let him ask the question, it's before me and not before a jury.

MR. DIEHL: Yes, sir.

THE COURT: Proceed, answer the question.

A. Would you repeat the question, please.

Q. (By Mr. Williamson) Mrs. Hayes, what is the practical difference between the duties performed by a registered nurse and those duties performed by a licensed practical nurse? A. Of course, there are quite a few. It has to do with responsibility for one thing. In fact, the licensed practical nurse works under the supervision of a registered nurse as one example.

I at this time did make any – I didn't have any feeling about or appreciate for whether she could perform as a practical nurse, that didn't enter into my evaluation. I was looking at the fact that in the area in which I worked with

students, I would have some difficulty accepting her as a student from a safety standpoint and this comes up – has come up before as a matter of fact. As an instructor I'm liable from a malpractice standpoint for the students who
21 work with me and if I question whether the student is able to perform the duties in the clinical area safely, then I can say then I will not, you know, work with the student in the clinical area.

I don't know if that answers the question but I'm trying to give you an idea of what I was thinking about when I made the evaluation.

Q. In respect to that, do I understand that licensed practical nurse is one that works under the supervision of a registered nurse, who is in a position to delegate certain duties? A. That's correct.

Q. And to supervise what she does? A. That's correct.

Q. Whereas, a registered nurse does not have that supervision? A. That is correct.

Q. Did you foresee a danger which may develop –

THE COURT: She is your witness you can't lead her.

Q. All right, Your Honor. Would you state whether or not, Mrs. Hayes, you foresaw any danger to patient care by the fact that you discovered that Mrs. Davis was severely hard of hearing? A. Yes, when it comes to like, particularly in emergency situations and as an example in the labor and
22 delivery areas, things move pretty quickly. It is the registered nurses' responsibility to accept verbal orders sometimes. There are some medications that sound a little bit alike. This is an example of what I was thinking about in relation to this.

MR. WILLIAMSON: Thank you, Ma'am.

RECROSS EXAMINATION

By Mr. Diehl:

Q. Do I understand what you are saying in your particular specialty, and that is the psychiatric nursing and in the maternal field – A. Right.

Q. – that you could foresee some problems?

A. Definitely.

Q. Now there are other areas of the nursing profession that Frances Davis could accomplish everything expected of an RN; is that not also correct? A. As a part of the nursing program we have to certify that the graduate can function in any and all areas of nursing. We do not have a process or a procedure which we can certify for one area.

Q. Are you not familiar with areas of nursing wherein she can function in an adequate manner? A. I do not know.

Q. Now when you stated that you would have difficulty
23 accepting Mrs. Davis in the maternal nursing area, do I understand that you were saying that the difficulty would be because she would require extra or almost constant supervision? A. That's part of it.

Q. In the training program? A. That would be part of it.

MR. DIEHL: That's all.

THE COURT: Do you want this lady to stay or do you want to excuse her?

MR. WILLIAMSON: They are all together. She won't be able to go until the others leave.

THE COURT: She's a nurse, she might be needed somewhere.

Whereupon,

VIRGINIA RIGGIO,

was called as a witness by and on behalf of the Defendant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Williamson:

Q. Would you state your name, please, Ma'am?
A. Mrs. Virginia Riggio.

Q. In 1973-74 academic year were you associated with Southeastern Community College? A. Yes, sir, I was.

24 Q. In what capacity? A. Director of the nursing program.

Q. Have you since that time retired? A. Yes, at the end of 1974, May 25.

Q. Mrs. Riggio, do you know Mrs. Frances Davis?
A. No, I did not know her.

Q. Did you know her as a student at the Southeastern Community College? A. No. I knew her as a student when she was wanting to be considered for the nursing program. She was on campus in the college related subjects that year before.

Q. Now when a student wanted to make application to the Associate Degree Nursing program, what procedural steps did they follow? A. At the time that they were interviewed in the general admissions office, they indicated an interest in the nursing program. They were then assigned to a counsellor in college and were guided to take the courses that would help them to be considered for the nursing program, the related subjects.

Q. Did you have any direct contact with Mrs. Davis until the application that she had made to the college came up to be considered by the selection committee? A. No, I don't believe I had. She hadn't had any contact with us.

25 Q. Did you serve during the spring of 1974 on the selection committee for the applicants to the Associate Degree Nursing program at the college? A. Yes, I did.

Q. Do you recall who served on that committee with you? A. Dean Ball, Julie Mola, Jim Schmidt and myself

and usually one other faculty member from the college.

Q. Mrs. Riggio, were you at that time familiar with the admissions criteria which was administered by the college?
A. Yes.

Q. I hand you a paper writing which has been marked Plaintiff's Exhibit 3 and has already been offered into evidence and ask you if that is the admissions criteria which was in effect at the time that Mrs. Davis made her application for admission to the Associate Degree Nursing Program?
A. Yes, it is.

Q. Do you have a copy of that? A. No.

Q. Mrs. Riggio, did the selection committee with which you served consider the admissions criteria in determining whether or not an applicant was eligible for admission to the Associate Degree Nursing program? A. Yes.

26 Q. Do you recall when Mrs. Davis' application came before the committee for selection? A. I believe it was probably about the second week in April.

Q. Do you recall at that time what you had before you in the way of evidence or her record to be considered as to whether or not she was eligible for the program?
A. We would have had her initial application to the college, her college and guidance and placement test scores, references, about three to five references, her high school record, her interview.

Q. Now following the action of the selection committee at that time in denying her application, did you personally make further efforts to determine the extent of her hearing difficulty? A. Yes, it was a concern because of what had come out in the interview about the hearing problem and we felt in fairness to her we needed specific information as to her hearing ability. I spoke to her and told her that this was one of the requirements and it could be someone of her choice. She had said Dr. Panalochas in

Fayetteville, but then she decided to go to Duke.

Q. As a result of her referral to Duke, do you know that she was examined by an audiologist named Burton B. King? A. Yes.

27 THE COURT: When you say she went to Duke, does that mean Duke Medical School? You see Duke in South Carolina is a big football team up here. A. It would be Duke Hospital, Medical School.

Q. You are making reference to Duke Medical Center? A. Yes, I am.

Q. I hand you another paper writing which has been offered as Exhibit Number 6 by the Plaintiff and ask you if that is a copy of the medical report which was delivered to you or to your committee from Mr. Burton B. King, the audiologist? A. No, I don't believe –

Q. Mrs. Riggio, that medical report there was not – that was not a report sent to you by Burton King, was it? I believe that was a report that was personally obtained by Mrs. Davis? A. Yes, because it's a different format altogether than I have on April 25, 1974.

Q. Now prior to that, did you write Dr. Koontz at the Speech and Hearing Clinic at the Duke Hospital in Durham on April 23, 1974 with reference to Mrs. Davis? A. Yes, I did.

Q. Now calling your attention to that particular letter dated April 23, 1974, I hand you a paper which has been

28 marked Plaintiff's Exhibit No. 7. Now I will ask you if you would identify that as to whether or not that is a letter that you wrote Dr. Koontz? A. Yes, that is the letter I wrote to Dr. Koontz.

Q. Now what was the purpose of that letter, Mrs. Riggio? A. We wanted a statement from him concerning her hearing and whether or not he felt that she could function in a nursing program because we had found that when somebody spoke to her from behind or to the side, that she had difficulty understanding what was being said and we also wanted to know if her hearing test would place her within the normal speech range and also whether or not the hearing loss could be corrected.

Q. As a result of your letter to Dr. Koontz did you receive a reply from him dated April 25, 1974? A. Yes, I did.

Q. I call your attention to a paper writing which has been marked Plaintiff's Exhibit number 8 and ask you if that's the letter you received from Mr. Burton B. King in response to your letter from Dr. Koontz? A. Yes, it is.

Q. Now upon receipt of that letter, what, if anything did you then do, Mrs. Riggio, as far as Mrs. Davis' application is concerned? A. I believe then I would have taken her folder to the admissions committee with this addi-

29 tional information for them to be able to reach a decision on whether or not she could be accepted into the nursing program.

Q. Di you contact Mrs. Gray, who was Executive Director of the State Board of Nursing at that time regarding this matter? A. Yes, I did.

Q. And was the medical information regarding Mrs. Davis provided to Mrs. Gray? A. Yes, it was.

Q. Did you receive a letter from Mrs. Gray dated May 17, 1974, which I think has been identified, Your Honor, as Plaintiff's Exhibit Number 11. A. I wrote a letter on May 14 as to her – the safe involvement of Mrs. Frances Davis in the nursing program considering her hearing difficulty.

Q. Was the response of Mrs. Gray dated May 17, 1974? A. Yes, it was.

Q. Mrs. Riggio, would you read to us the context of the letter from Mrs. Gray? A. "This is in response to

your request by telephone on May 13 and restated in your letter of May 14 for our opinion as to the safe involvement of Mrs. Frances Davis in the nursing program considering her difficulty.

We concur with your opinion as stated on the telephone
30 that Mrs. Davis' hearing disability can preclude her being safe for practice in any setting allowed by license as an RN or by a license as an LPN. More over, we would question the adviseability of you and the faculty assuming the responsibility for Mrs. Davis' involvement in patient care as a student in nursing. To adjust patient learning experiences in keeping with Mrs. Davis' hearing limitations could, in fact, be the same as denying her full learning to meet the objectives of the nursing program.

The basis of our opinion is found in the audiologist's response to you from Duke University on April 25th and the relationship of this response to expectations of nurses in patient care. If she is allowed to see the talker and use her vision to aid her in interpreting the speech of others she can perform satisfactorily in most learning situations. While wearing a hearing aid she is well aware of gross sounds occurring in a listening environment, however, she can only be responsible for speech spoken to her when the talker gets her attention and allows her to look directly at the talker.

Both you and I can identify enumerable patient care situations in which this lady's abilities as defined in the quoted paragraph would be inadequate to respond to the patient's needs. In fact, it would be inadequate for her probably to identify all the patients needs for which she
31 would be accountable or even to pick some obcluse situations that could be quite critical to the point of life-death situations.

Certainly, it must be frustrating to an individual as Mrs.

Davis, who according to your identification, is very intelligent and has a determined interest to pursue nursing not to be able to fulfill this goal. However, how much more frustrated she might become if she be enrolled in the program and experience a different kind of trauma in terms of missing some very important clues in patient care or even in experiencing a wrong measure of patient's needs.

I believe that you indicated on the telephone that there are other career avenues open to her which would capitalize upon her abilities and which the hearing disability would not be a significant barrier as it could be in nursing. We would urge the college in counselling Mrs. Davis to alter her career goal as we do not believe on the basis of facts we have now that Mrs. Davis would either be safe for herself or for patients, or for faculty to pursue a nursing education program and we will be interested to know what route Mrs. Davis does elect in terms of an alternate opinion.

Miss Mary McKree, Executive Director, North Carolina State Board of Nursing."[*]

Q. Based upon the medical information which you received from Duke Medical Center and the letter that you received from Miss McKree, together with other evidence which was available at that time, was the admission of – was the application for admission of Mrs. Davis rejected or declined? A. Yes, it was.

MR. WILLIAMSON: You may examine.

CROSS EXAMINATION

By Mr. Diehl:

Q. Now Mrs. Riggio, you had the overall supervisory duty for the nursing program at the college; is that correct?
A. Yes, I did.

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*Miss Mary McRee's last name is misspelled "McKree" throughout the transcript. See p. 134a, *infra*.

Q. And in the final analysis when the selection committee met you would make a recommendation as to the acceptability of the student under your care and supervision; is that correct? A. I voted as a member of the committee.

Q. Now in the application for Mrs. Davis, when she filed it in the spring of 1973 with the college, that was about March of 1973; is that correct? A. Yes.

Q. And shortly after that time a Mrs. Ashley, around April 25, 1973, conducted an interview with Mrs. Davis?

33 A. Yes.

Q. Is Mrs. Ashley a member of your staff or was she at that time? A. She was at that time.

Q. So as of April 25, 1973, you were acquainted with the hearing difficulties of a prospective student who had indicated in her application that she wanted to pursue the RN program; is that correct, or RN training program? A. Yes.

Q. And that program is called the Associate Degree in Nursing? A. Yes.

Q. Now in April of 1973 until the interview with Mrs. Odum, now Mrs. Hayes, in March of 1974, nothing was done to contact or work with Mrs. Davis concerning the possibility that she might not be accepted inot the ADN program; is that not correct? A. I believe that Mrs. Davis was assigned to Mrs. Julie Molla, now Stocks. Julie was acquainted with the fact that Mrs. Davis, we had detected she had a hearing problem and it was suggested that she talked with her in her counselling as she helped her to make her program for the next year about the possibility about this might could cause a problem.

Q. Did that conversation take place, approximately,

34 March of 1974 immediately before Mrs. Odum's interview? A. No, this would have been in '73. She was on campus taking college related courses for a whole year before she wanted to come into the nursing program.

Q. By her application to college did she not designate that she was intending to enter the ADN program?
A. Yes.

Q. And the programs or courses which she took during the '73-74 school year, were they not specifically courses that were involved in preparatory work for the ADN program? A. They would be part of the required curriculum but they were general college courses.

Q. Now Mrs. Riggio, when you first met with Frances Davis, do you recall when that was? A. March 18, 1974.

Q. That's the same day that Mrs. Odum, now Mrs. Hayes, interviewed Mrs. Davis; is that not correct?

THE COURT: That's the same day.

A. Same day.

Q. Do you know whether your interview or your meeting with Mrs. Davis took place before or after Mrs. Odum, now Mrs. Hayes, interviewed Mrs. Davis? A. I believe it took place after.

Q. Afterwards. And you had the benefit of Mrs. Odum's report and evaluation; is that correct? A. Yes,

35 I did.

Q. As well as Mrs. Ashley's from a year ago?
A. Yes, sir.

Q. And at that time as a result of your talking with Mrs. Davis, she went to Duke University to the Medical Center and saw Burton King; is that correct? A. Yes.

Q. And you know that Dr. or Audiologist Burton King changed the prescription of her hearing aid, in fact, prescribed for her a new type of hearing aid that he said improved her hearing capability; is that correct?
A. Yes.

Q. And in fact, improved them to the outer range of normal; is that correct? A. Yes, that's what he stated.

Q. Now as a result of your communications with Mr. King, you then contacted Miss Mary McKree, State Board of Nursing? A. Yes.

Q. The State Board of Nursing is a regulatory body established by the State of North Carolina by statute; is that correct? A. Yes.

Q. And it is the licensing agency for anyone in the nursing practicing progession; is that correct? A. Yes.

36 Q. It licenses both LPN's and RN's? A. Two different tests but they do license.

Q. The distinctions being though in the theory between an LPN and an RN as far as the tests are concerned, is that correct? A. It would be testing the theory as well as practice application.

Q. At the time that you contacted the State Board of Nursing you did that the first time by telephone, I believe? A. Yes.

Q. And that was May 13th. At that time you did not tell Miss McKree that Frances Davis was a practical nurse; did you? A. I honestly can't remember.

Q. Well, I ask you to refer to the exhibit, the letter of May 17th and ask if the second sentence–

THE COURT: What's the exhibit number?

MR. DIEHL: If Your Honor, please, this would be Plaintiff's Exhibit Number 10.

THE COURT: All right, please, refer to the exhibit numbers. See, you people know what you are reading, but I don't. The exhibit number if my direction.

Q. Plaintiff's Exhibit Number 10, which is the letter

37 to you from Miss Mary McKree dated the 17th of May? A. Yes.

Q. And in that, the second paragraph reads, "We concur with your opinion as stated on the telephone that Mrs. Davis hearing disability can preclude her being safe for practice in any setting allowed by a license as an

RN or by a license as an LPN; is that correct? A. Yes.

Q. But you do know that Mrs. Davis is a licensed practical nurse? A. Yes, I knew she was an LPN.

Q. Mrs. Riggio, the reason for the disapproval of this application was because of the interpretation of the State licensing procedure by Miss McKree as concerns Mrs. Davis' hearing; is that correct? A. Her opinion was taken into consideration because our prime consideration in considering Mrs. Davis was whether we felt we could endorse her as a safe practitioner with physical and moral capabilities. We have to do with as part of endorsement for State Board in order for her to go to the State Board and take the exam.

Q. That is totally directed toward whether or not she can practice as and be licensed as an RN: is that correct? A. Yes.

38 Q. You have made no distinction as to whether or not she was capable of and qualified to accept the classroom or the educational benefits of the ADN program; did you? What I am saying, Mrs. Riggio, is that the decision was as to whether or not she could practice and be licensed as an RN? A. Yes.

Q. And not as to whether she was suitable for the educational instruction offered by the ADN program? A. We have to look at it in total because the theory and practice are intertwined and you can't consider a person just as excellent in theory or excellent in practice. They have to have both of these and that had to enter into our decision.

Q. In the selection process, Mrs. Riggio, did you notice any difference in conversations with Mrs. Davis after the prescription of the new hearing aid? A. I honestly could not tell you because I'm not certain when she got the hearing aid, but I would refer you to Dr.

King's, where even with a hearing aid she still has to have the person get her attention and speak directly to her in order for her to distinguish the gross sounds in the situation.

Q. During the training that is offered by your school in the clinical portion, that's done under the supervision
39 of an instructor; is it not? A. Yes.

Q. Would Mrs. Davis have required additional supervision? A. We felt that she would. Our instructors are responsible for anywhere from eight to twelve students in the clinical area.

Q. At the time of the rejection of Mrs. Davis' application, the college had a working agreement, a contract with Southeastern General Hospital for the clinical portion of the nursing program; is that correct? A. Yes.

Q. Immediately prior to your retirement, Mrs. Riggio, was there not a conflict between the college and the Southeastern General Hospital wherein it was stated that the contract would not be renewed unless the college provide closer and more adequate supervision to the nurses training in the clinical portion of the work?
A. I'm not familiar with that.

Q. You are not familiar. That's all.

REDIRECT EXAMINATION

By Mr. Williamson:

Q. Mrs. Riggio, with reference to the letter that you received from Burton King, which has been identified as Plaintiff's Exhibit 8 and more particularly with reference to her inability to communicate except by sight, would
40 you read the last paragraph on the first page of that letter dated April 25, 1974? A...To answer your specific questions, I should state that Mrs. Davis does not possess normal hearing, however, with a hearing aid on her right ear she is very skillful in communicating with

other people. If she is allowed to see the talker and use her vision to aid her in interpreting the speech of others, she can perform satisfactorily in most listening situations. While wearing a hearing aid she is well aware of gross sounds in the listening environment, however, she can only be responsible for speech spoken to her when the talker gets her attention and allows her to look directly at the talker."

Q. As the director of nurses, would it have been your responsibility to complete the certificate to the State Board of Nursing had she been allowed to complete the ADN program? A. Yes, it would have.

Q. I will ask you whether or not in that certificate of the school that it was necessary that you certify that the applicant would be capable of providing safe nursing care as well as being of good moral character? A. Yes.

Q. Was this a factor which was taken into account in determining her eligibility for this program? A. This
41 was the factor, yes.

MR. WILLIAMSON: I have nothing further.

RECROSS EXAMINATION

By Mr. Diehl:

Q. Mrs. Riggio, the same application for the LPN program is submitted upon the graduation of the candidate; is it not? A. I don't believe it's the same application. It would be a different application.

Q. But the wording is in a similar manner, would it not be, as to the physical qualifications of the applicant?
A. I would imagine it would be similar but we would have to remember that she would be functioning under different situations as an LPN that we would as an RN.

Q. There are no physical distinctions in qualifications for RN and the LPN that you know of; are there?
A. I don't believe so.

Q. And as far as the ability of Mrs. Davis to receive

the educational process, you know of no reason why she could not have received the educational benefits of the ADN program just by virtue of her physical disability; do you? A. The thing is that the ADN program leads to the point where we endorse for registration as an RN and I would think that we would have to take into consideration the physical as well as the others if we are going to
42 take somebody in with the idea this is where they are headed.

Q. Do I understand then you are saying that you felt at the time of her application, irregardless of whether she could do the educational work or arrive at the proper educational level, that at that point, time of admission, you were unwilling to certify that she could practice and be licensed as an RN because of her hearing limitations; is that correct? A. Yes.

Q. And that interpretation was based upon the opinion submitted by Miss McKree of the State Board of Nursing; is that correct? A. With the report from Dr. King.

MR. DIEHL: No other questions.

FURTHER REDIRECT EXAMINATION

By Mr. Williamson:

Q. Mrs. Riggio, following the initial rejection by the selection committee in the spring of 1974, was there another committee organized and was her application reconsidered later on in the summer of 1974 after having received these various letters and other information that you have testified about? A. We of the faculty were asked in July, I believe it was, to reconsider her application and we submitted a memo to Dean Ball at that time
43 that we had reconsidered her application and we still stood by our original decision of the admission committee.

Q. I'll ask you if this subsequent committee was a different group than the original selection group? A. Yes, it was.

Q. Do you recall what the second committee that reconsidered her application, do you recall what it was composed of? A. I believe I stated it was the nursing faculty on campus during the summer and it would have—

Q. And this was a meeting where her total application was reconsidered? A. Yes.

Q. And again after reconsidering it, what action did the faculty committee then take in reconsideration?
A. They stood by the original decision of the admission committee.

FURTHER RECROSS EXAMINATION

By Mr. Diehl:

Q. Miss Riggio, this reconsideration came about as a result of a request by Frances Davis to appeal your decision or original decision of your committee? A. Yes.

Q. And as a result of that the new or the summer faculty met and reviewed the application and again
44 rejected the application? A. Yes.

Q. And then there was appeal to the Dean and to Dr. McCarter by Mrs. Davis; is that correct? A. I wasn't there then, but I believe it did occur, yes.

Q. At no time did you or anyone else request that Mrs. Davis make a written notice of appeal or a grievance; did you? A. I would not be familiar with that because I wasn't there.

Q. During the time that you were actively involved in the initial and second decision, did you ever request her to file a written grievance as to the rejection of the application when she told you she wanted to appeal this decision? A. Not that I can recall, that wouldn't have been within my province.

MR. DIEHL: That's all.

THE COURT: May I ask you a question, Ma'am, as I understand it, in your field of endeavor there are two

phases of training, one is called educational and the other is called clinical? A. Yes.

45 THE COURT: The educational, don't agree with me because I'm a judge, people do that sometimes and I have to caution them, I would assume the educational courses, like anybody else would take in pursuit of an academic degree or professional degree; is that correct? What is the educational program if it's not something like that? A. Well, she would take, for instance, medical-surgical nursing. Now she would have classes, the theory part so many days.

THE COURT: The surgeon would come in and talk? A. Lectures. Along with this, she would have her clinical practice two days a week in the clinical area and in order to go on to the next quarter in the program she would have to achieve a satisfactory graade in the clinical. Even if she got a straight A in the theory, if she did not pass the clinical she could not go on to the next quarter.

THE COURT: The clinical, I suppose that's where she goes around to the surgical wards and visits and does different tasks that she is assigned to do? A. Yes, she is assigned by her instructor to certain patients and she carries out her assignments for that day and is evaluated.

THE COURT: She's the people that give you a sleeping pill and then keeps you awake for so many visitors. I think I understand that. When you say the educational program, is there any way to separate it from the clinical

46 program or have you ever separated it before from the clinical program in the training of any person for this ADN degree, which I assume has the same or similar rank to an RN? A. No.

THE COURT: It does not. Does it have a similar rank, Associate Degree of Nursing? A. It's leading to the preparation to take the registered nurse exam.

THE COURT: Have you ever in your career as a

supervisor, and I will ask you only how long you have been a supervisor? A. I had three years at Southeastern Community College as a director of the nursing program and I had five years previously as a registrar and general counsellor in the three year program.

THE COURT: In that period of time, did you ever have a separation of the educational from the clinical? A. No.

THE COURT: As a professional, who I think is recognized by your positions, have you ever heard of a separation? A. No, sir. Even if we took a student that had been in another program and came to us, we would still have to evaluate to see what she had had and make up the deficiencies because we have certain things that we feel they have to be able to do in order to

47 graduate in both the theory and the practice and they have to have that and if they miss enough days in the clinical they have to make that up before they can graduate.

THE COURT: I generally use the word academically wrongly, I suppose you give academic tests or grade on what is taught in the classroom? A. Yes.

THE COURT: You said she would make a straight A. Does that testing include the clinical applications? A. It would include, yes it would involve, because she would have to have the knowledge that she had already gained from her studies, but also the practical application in order to give you the correct answer because you would need the practical application to better understand a lot of the theory that you would have in class.

THE COURT. Thank you very much. Would either counsel like to pursue in view of the Court's questions?

MR. DIEHL: Could we have just a moment to discuss it?

THE COURT: Yes, sir.

FURTHER RECROSS EXAMINATION

By Mr. Diehl:

Q. Mrs. Riggio—I'm sorry this would be the Defendant's witness, first.

48 THE COURT: Do you wish to pursue?

MR. WILLIAMSON: Yes.

FURTHER REDIRECT EXAMINATION

By Mr. Williamson:

Q. Mrs. Riggio, to go just a step further, what areas would a student actually be involved in in the clinical portion of this training, that is in the hospital? A. In medical and surgical wards, they have an experience in the operating room, they have experiences in post-partum labor and delivery, the nursery, psychiatric, the beginning fundamental nursing skills and in the second year to to the more advanced medical-surgical nursing skills with particular experiences in intensive care-coronary care, this sort of thing.

FURTHER RECROSS EXAMINATION

By Mr. Diehl:

Q. Mrs. Riggio, in the clinical aspects of the program, all the work is done under the supervision of faculty; is that correct? A. Yes, it is.

Q. And what would be required of Frances Davis in additional supervision that the faculty was not at that time prepared to offer her; is that nor correct? A. Yes.

Q. From a standpoint of everything that the student

49 nurse does in the RN program, the faculty is required to and is responsibile for the supervision? A. Yes, they are.

Q. Now, for instance, in the administration of IV fluids or a blood transfusion, can a student nurse do that and do that? A. At the time that I was with the program we were not preparing students to do this.

Q. In other words, what I understand you are saying then, there were areas where the professional skills involved

were of such a nature that the students were prohibited from carrying on the very meticulous acts that might be involved; is that correct? A. There are certain things that they do not perform. We have a set criteria of what they should be able to perform, say, as a first year student when they finish fundamental areas of nursing and there are procedures that they have to be able to carry out.

Q. Mrs. Davis with an instructor supervising her could have accomplished all of the skill levels in the clinical program; could she not? A. There is the possibility that she could if she just had one person with her to completely supervise and make sure that she understood what was being said and what she was to do and that she understood her patient.

50 Q. The problem was the college was not in a position it wanted to modify its program to compensate for Mrs. Davis' handicap; is that correct? A. Yes, plus under State Boards we are not allowed to tailor make a program for a particular person. She has to go through the very same equal opportunities that every other student does and would be expected to perform.

Q. I understand. Now going solely to the training level, whether it's education in theory or in clinical practice, do I understand you correctly that you are saying that the college was not prepared to provide her with the supervision that might be necessary to compensate for her handicap in the clinical program? A. No, we were not prepared.

MR. DIEHL: You were not prepared, that's all.

MR. WILLIAMSON: I would like to ask Mrs. Riggio one further question.

FURTHER REDIRECT EXAMINATION

By Mr. Williamson:

Q. Mrs. Riggio, do you have personal knowledge of the number of applicants in 1974 academic year for the ADN

program at the college? A. I couldn't tell you a specific number but there were probably anywhere from a 150 to 175.

Q. Could you tell me whether or not in reviewing the
51 application of Mrs. Davis and her suitability for the program, whether or not you used any different standards of measuring her capabilities than you did any of the other applicants? A. No.

Q. Was she treated like everybody else in the selection process? A. Yes.

MR. WILLIAMSON: Thank you, Ma'am.

THE COURT: Anything further, Mr. Diehl?

[Witness excused].

MR. WILLIAMSON: Mrs. Stocks.

Whereupon,

JULIA M. STOCKS,

was called as a witness by and on behalf of the Defendant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Williamson:

Q. Would you state your name, please, Ma'am? A. Julia Molla Stocks.

Q. Mrs. Stocks, are you associated with Southeastern Community College? A. I am.

Q. Were you during the 1973-74 academic year? A. I was.

52 Q. What was your position there? A. I was a counsellor and a part of that year I was the advisor to the nursing program to help them.

Q. In this position did you have occasion to become acquainted with Mrs. Davis? A. Yes, I did.

Q. Do you know, approximately, when and what the circumstances were surrounding that? A. Yes, it was for fall quarter registation. She came to my office to make registration for the fall quarter.

Q. Was this in the fall of 1973? A. Yes.

Q. Now, did you serve as counsellor to her during that academic year? A. Yes, I did.

Q. Did you have contact with her frequently? A. I would say throughout the '73-74 academic year I saw her between four and six times.

Q. Did you discuss with her during that period of time her—the possibility of her being admitted to the ADN program at the college? A. Yes, I did.

Q. At that time, Mrs. Stocks, were you aware of her hearing problem? A. Yes, I was.

53 Q. Would you describe to the Court, please, Ma'am, what extent this includes your dealing with her? A. Okay, part of the application for has an answer form on it and the doctor had noted that she had hearing difficulty. So I talked with her about the hearing difficulty and said that she might have trouble in the training program at Southeastern and when she would graduate.

Q. Now did you serve in the spring of 1974 on the selection committee? A. Yes, I did.

Q. Mrs. Riggio was on that committee with you? A. Yes, she was.

Q. Do you recall who else served on that committee? A. Mrs. Pauline Ashley and Mr. Jim Schmidt.

Q. Mrs. Ashley, Mrs. Stocks, was she at that time Director of Nursing? A. No, Mrs. Riggio was.

Q. What was Mrs. Ashley's position if you recall? A. She was a nursing faculty member.

Q. What about Mr Schmidt? A. He was Director of Admissions.

Q. Do you know where Mr. Schmidt is now? A. Stetson University Law School.

Q. And what about Mrs. Ashley? A. I do not.

54 Q. She is no longer with the college? A. No.

Q. Were you familiar with the admission criteria for the Associate Degree Nursing program, Mrs. Stocks? A. Yes.

Q. I hand you a paperwriting which has been marked Plaintiff's Exhibit 3 and ask you if that was the admissions criteria used by the selection committee during that particular period when Mrs. Davis' application was being considered? A. Yes, sir.

Q. What did you have before you in determining her eligibility, if you recall? A. During the selection process?

Q. Yes, Ma'am. A. We had the application form, which included a medical form, a dental form, two suitabilities and I believe in her case she had three to five, a transcript of her high school, her comparative guidance and placement schools and her grades at Southeastern Community College.

Q. Was it then your decision as part of the committee that she could not function in the ADN program? A. Oh, we did have an audiologist's report at that time, it had just come in and on the basis of that plus the other infor-

55 mation we decided.

Q. You had received Mr. Burton King's report? A. Yes.

Q. So you had that information also? A. Yes.

Q. You didn't serve on the second committee? did you? A. I did not.

MR. WILLIAMSON: Thank you.

CROSS EXAMINATION

By Mr. Pate:

Q. Mrs. Stocks, if I understand your testimony correctly, you became involved as a counsellor and advisor to Mrs. Davis sometime in March, 1973; is that correct? A. No,, it's not.

Q. When was it then? A. Fall of '73-74 academic year.

Q. And you indicated, I believe, that you met with her during that academic year some four to six times; is that right? A. That's correct.

Q. What would you talk about at these meetings? A. The requirements for the Associate Degree Nursing program and, you know, the things that she had to get in, her application forms, all the things I just cited had to be for the committee even to consider her application, had to be a

56 complete file. So, we talked about this, then we did discuss her hearing difficulty.

Q. And you first learned of her hearing difficulty by virtue of the fact you looked in the file and you saw it in the medical report; is that correct? A. That's correct.

Q. During these meetings you had no problem as far as communicating with Mrs. Davis; did you? A. I did not, but she was like right her to me, too, she was very close.

Q. Now is it not a fact, Mr. Stocks, that throughout the school year in these four to six meetings that you had, that you encouraged Mrs. Davis to pursue the ADN degree; is that not true? A. I encouraged her. When I first found out about her hearing difficulty and talked with her about it I encouraged her to look into this problem to see how that might effect her admission into the program. I told her that she had the right, as did everyone else, to take courses at the college, general college courses.

A. After you discussed this with her, she nonetheless

communicated to you that she wanted to go into this particular area and you did, in fact, encourage her, didn't you, on several occasions? A. I would not say it was encouragement.

57 Q. How would you characterize it? A. I would say it was a realistic discussion of the facts and what might be involved in her admission into the program.

Q. Are you a registered nurse or LPN? A. No, I'm not, I'm a counsellor, and let me clarify the position at this time, the '73-74 academic year and immediately after that they wanted to have a counsellor talk with the people who applied for admission to the Associate Degree and the Licensed Practical Nursing Programs, the reason being that we had many more applicants than we had space and not all the students would be able to make it by reason of grades or any other kind of thing. So, they wanted to have a counsellor help the students make vocational choices into other kinds of careers if they decided they did not want the nurses programs or they were not capable of doing the nursing programs. That was the reason for the counsellor at that period of time.

Q. As her counsellor, you were aware of her grades throughout that school year; were you not? A. Yes.

Q. And her grades were good, were they not? A. Well, she did make a C in biology the first quarter, which is not that good. It is average. Then she made B's the

58 rest of the time. But the nursing slection committee does look particularly at biology and math.

Q. Her grades, you would generally characterize her as a B student, would you not? A. At Southeastern Community College. She did take courses at Pembroke that her grades were not B.

Q. Did you have occasion to see her grades from Robinson Tech? A. I did not.

Q. Now you indicated, I believe, that you were a member of this selection committee that reviewed the applications is that correct? A. Yes, I was.

Q. And did you have a vote on who was to be admitted? A. Not really. No, it was done by concensus, more or less, all the committee.. My advice was in my capacity as the counsellor. The other three members did the voting. I was just kind of there to share information about my conference as their advisor.

Q. Did you give an opinion to this selection committee that Mrs. Davis would not be able to accomplish the work in the ADN? A. I did not.

Q. You did not. A. No. I deferred to the medical specialists in the group, and to the nurses.

59 Q. Now following the disapproval of Mrs. Davis to the ADN program, did you have occasion to talk with her about this disapproval? A. I don't think I did.

Q. At no time? A. I don't remember that.

Q. Are you familiar with the grievance procedure of the college? A. Yes, I am.

Q. Did you ever at any time advise Mrs. Davis that if she did not approve of what the selection committee did that she had a right to make a grievance? A. I did not. I did see her at one time in the summer when she and her husband came to talk with informal discussion about the card and they asked me to come in for the discussion.

Q. Did you advise her at that time of the grievance procedure? A. I did not.

Q. Did you assist her in making out a written statement of any grievance that she might have? A. She did not ask me to.

Q. Are you aware that under the grievance procedure of the college that you are required to do that? A. I

60 don't understand the question.

Q. Well, let me ask you, this is Defendant's Exhibit 3, Your Honor, –

THE COURT: All right, show it to her.

Q. I hand you what has previously been marked as Defendant's Exhibit 3, and ask you if you have ever seen it? A. Yes, I have.

Q. Are you familiar with it? A. Yes.

Q. And are you familiar with this portion reading that the counsellor will assist the student, think through the grievance and if the student desires, assist him in developing a written statement of the grievance to be submitted to the student's dean. Are you familiar with that portion? A. Yes.

Q. Did you do that for Frances Davis? A. She never approached me about that.

Q. But at no time did you tell her about that procedure? did you? A. Well, at the time, the last time I talked with her was before the selection committee met.

Q. Didn't you indicate that you saw her one time after that? A. With a host of other people.

60 Q. You did not at that time indicate that there was a procedure that the college had for submitting grievances? A. That is not my role. I would not say anything to her. Dr. McCarter at that meeting, who is the president of the college, met with her and a host of other people and talked with her informally, called me in to say, "This is Mrs. Stocks, your advisor, Miss Molla, your advisor who will help you make, who will be there to help you make some other career choices." Then I left. Now I believe that Dr. McCarter did tell her there was a standard grievance procedure to follow.

Q. Mrs. Stocks you are not going to deny that the college's own grievance procedure and it says here the counsellor will assist in perfecting these grievances. You are not

denying– A. Are you suggesting, sir, that I should go around to every student and ask them if they want to make a grievance?

Q. You knew in this particular case, did you not, Mrs. Stocks, that this lady had a grievance? A. I did not know that.

Q. You were not aware that her application to the nursing school was disapproved? A. But how many people are disapproved. She was one of 40 people that were dis-

61 approved. And in the year past and in all the years that followed we did not ask every person that wasn't approved if they had a grievance and it is their responsibility to seek that course of action.

Q. Ther was, to be honest, isn't it true, Mrs. Stocks, that there was never really a great deal of emphasis put on this grievance procedure any way at that college; was there? A. I cannot say that.

MR. PATE: No further questions.

REDIRECT EXAMINATION

By Mr. Williamson:

Q. Mrs. Stocks, did I understand you to say in response to one of Mr. Pate:s questions, that you discussed with Mrs. Davis some alternate career programs outside of the Associate Degree Nursing Program? A. Well, there was two points, one before the selection committee met and one afterwards and when she was, in my advising, registering for different courses, we talked about other programs in generalities. Then after the selection process, then she met with Dr. McCarter and other people, he said, "All right, now is the time for you to make yourself available to Mrs. Stocks so she can help you with other health careers."

63 Q. Did she ever make herself available to you? A. I have not seen her.

Q. Did you ever see her any more after that particular day in Dr. McCarter's office; A. No.

MR. WILLIAMSON: Thank you.

[Witness excused].

Whereupon,

W. RONALD McCARTER,

was called as a witness by and on behalf of the Defendant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Williamson:

Q. Would you state your name for the Court, please, sir? A. W. Ronald McCarter.

Q. Mr. McCarter, are you asociated with Southeastern Community College? A. Yes, sir, I am president of Southeastern Community College.

Q. How long have you been associated with the college? A. Since December of 1973.

Q. You are acquainted with the situation of Mrs. Frances Davis; are you not? A. Yes.

64 Q. Dr. McCarter, did you have personal knowledge in the spring of 1974 of the number of applicants at the college for the ADN program? A. I did not keep up with the specific number of applicants but common knowledge is that we frequently have over 100 applicants each year for that program.

Q. What were the number of students that could be accepted into the program? A. 45 each year.

Q. Now did you know that year in the spring after the meeting of the selection committee that the application of Mrs. Frances Davis had been rejected by the selection committee? A. Yes, I knew that her application had been rejected.

Q. When did this first come to your attention? A. I don't remember the specific date, we get reports from the activities of the admissions committee about names of individuals who are being selected and who are not. I didn't really have specific knowledge about the whys and wherefores until the conference in my office in June.

Q. When was the first occasion that you had a face to face confrontation witn Mrs. Davis in the 1974 academic year? A. This occurred about the middle of the month

65 of of June when she came to my office.

Q. Had you seen her prior to that time? A. I don't recall seeing her prior to that time.

Q. Had you had any conversation personally with her prior to that time; do you recall? A. I don't recall any conversation.

Q. Would you describe to the court, please, the circumstances surrounding that meeting? A. Mr. and Mrs. Davis came to my office that day. They came in and said that they would like to discuss her rejection by the admissions committee. I had them seated in my office and then I called as many people together as I could find at that moment who were involved, which included Mrs. Riggio, Jully Molla Stocks, Dean of Students Dan Moore, and there may have been one other nursing instructor, I'm not positive of that. I tried to get as many people together as I could, who knew something about the details of the situation.

Q. Was this meeting anticipated? A. No.

Q. Had Mrs. Davis written you or called you or made any formal request for a meeting? A. I don't recall anything other than her just coming in.

Q. Now as a result did this meeting take place there

66 in your office? A. That's correct.

Q. Over what period of time would you say that it covered? A. At least an hour, maybe two.

Q. Would you please tell the Court what took place? A. I said, Mrs. Davis asked if she could discuss her rejection. We did get the people together who knew something about that rejection. We did discuss the reasons for it. I told Mrs. Davis at that time that since she had voiced an interest in discussing that with me that I would ask the committee to reexamine her case and to review her case to be very certain that their decision was sound.

I did ask the committee at that time to work closely with Dean Moore, the Dean of Students, to review all the facts of the matter and to render an additional decision, a reviewed decision.

Q. Do you recall the manner in selecting the committee to review Mrs. Davis' application and by whom it was reviewed? A. That question would have to be answered by the Director of Nursing, Mrs. Riggio.

Q. Now Dr. McCarter, did you discuss with Mrs. Davis on this occasion in your office the grievance procedures as
67 provided by the college. A. I explained to Mrs. Davis that day that we would review the case by the nursing admissions committee and we would ask that nursing admissions committee to give it any reconsideration which they could give it.

I also explained to her that if they came back with the same decision she would have the right to appeal it all the way to the Board of Trustees.

Q. I hand you a paperwriting, which has been marked Exhibit 25 and already introduced into evidence entitled "Grievance Procedure" is that the grievance procedure that was in effect at the college on that occasion? A. It looks like the grievance procedure that was in effect.

Q. What, Dr. McCarter, was the procedure that Mrs. Davis would have followed in expressing her grievance? A. You mean subsequent to the review of her case?

Q. Yes? A. All right, after the committee had reconsidered her case and rendered the decision, I believe which was expressed to her in August by the Dean of Students, if she had followed the grievance procedure, she would then have approached one of our counsellors or possibly Dean Moore himself who wrote her the letter and she would have asked him to assist her in writing a formal grievance. Once
68 the formal grievance was written it would be taken before a committee, a grievance committee of the college, which is made up of students and faculty. The decision at that point would have been appealed to my office and from my office to the Board of Trustees and the decision of the Board would have been final.

Q. Do you know of your own knowledge as to whether or not Mrs. Davis availed herself of any of these administrative procedures? A. I have no knowledge of her initiating that process.

Q. Following your meeting in your office, do you recall whether or not you had any further word from her or any contact with Mrs. Davis? A. I don't recall any other personal contact with Mrs. Davis.

CROSS EXAMINATION

By Mr. Diehl:

Q. Dr. McCarter, referring to Defendant's Exhibit Number 25, I believe it is, as to the grievance procedures, where does it say in there, sir, that the appeal is to the Board of Trustees? A. We made that option open to any student or any faculty member to appeal any decision of the president to the Board.

Q. But it is not printed there, is it? In fact, what is
69 printed there is the appeal to the president? A. That's correct.

Q. So Mrs. Davis, first of all, had gone to Willard Small,

who was the chairman of the Board of Trustees and advised him of her grievance, you know that do you not, sir? A. I have no personal knowledge of that, sir.

Q. Did he call you? A. No, but I understand that he did talk it over with one of our other deans.

Q. And as a result of that communication to you and a request for an appointment by Mrs. Davis, you did make an appointment for her to see you; is that correct? A. That's incorrect.

Q. Did she not have an appointment to come to your office for this meeting in June? A. My recollection is that she just came in. I don't recall the appointment. In trying to ascertain that fact I looked back on my calendar and could not find evidence of an appointment.

Q. Now Dr. McCarter, when you met with Mr. and Mrs. Davis, at that point you called in Miss Molla and the Dean of the College, and was Mrs. Riggio involved in that; did you say? A. Yes.

70 Q. But she had already left the campus; had she not? A. At that date she had not left the campus.

Q. Didn't she testify earlier here that she was not involved in that decision, the second decision?

THE COURT: What?

MR. DIEHL: I apologize, did Mrs. Riggio in her testimony today, Dr. McCarter, testify that she was—strike that.

During the conference that took place in your office, Dr. McCarter, was not the emphasis placed on whether or not Mrs. Davis could be licensed and work, and could work in the field of a registered nurse? A. As I recall the general trend of the conversation was based around the reasons why the committee had made the decision that they had. The various reasons were cited, reasons such as her projected inability to function in the clinical

educational setting; her inability to safely work in the clinical-educational setting; the projected inability to be certified to sit for the State Board of Examiners was also discussed; and her safety in practicing as a nurse upon being licensed.

Q. You are talking about the inability to function in the clinical setting without additional supervision provided by the college; are you not? A. We did not discuss it in that matter. We discussed it in the matter of her

71 inability to function as a student in the clinical setting.

Q. Well, Dr. McCarter, did you not make a request of her that she gather statements from five hospitals in the area that they would hire her? A. Yes, we asked Mrs. Davis in preparation for the review of the file to get as much evidence together as she could to assist us in that review.

Q. And as a result of that you received a communication from Southeastern General Hospital that she would be hired there; did you not? A. The statement did come from the Director of Nursing at Southeastern Hospital and the Director of Nursing did say that she could be hired in certain kinds of positions.

Q. I hand you a copy of Plaintiffs Exhibits 15 and 17, and would ask you if you are familiar with these, Dr. McCarter?

THE COURT: This is your exhibits number 15 and 17?

MR. DIEHL: Yes, sir, Plaintiff's Exhibits.

A. Yes, I am familiar with those.

Q. And you received these letter as a result of inquiries as to whether or not Mrs. Davis was suitable for employment; is that correct? A. That's correct, sir.

72 Q. And the last paragraph of Plaintiff's Exhibit 15, which is the letter of July 1 reads, "I do not believe that

I can truthfully state that she would not be able to function in any area of nursing with her present determination to continue her education?" A. That's what it says there.

Q. Thank you, sir. Dr. McCarter, when you met with Mrs. Davis and her husband in June of 1974, you knew that Mrs. Davis had a grievance; is that correct? There was a dispute as to whether she should get into the program? A. When she came to my office and she that she would like to discuss it, I assumed that she did have a grievance.

Q. Did you go over with her any steps in the grievance procedure? A. I explained to her that that option was available.

Q. Did you tell her that she had a right to appeal to the Board of Trustees at that time? A. Yes.

Q. When, in fact, she had already talked with the president of the Board of Trustees by her own statement; is that correct? A. I don't recall her telling me one way or the other whether she had ever talked with the Chairman of the Board of Trustees.

Q. Did she not tell you that she was appealing to you
73 as president of the college for a reversal of the decision? A. No, she did not. She came in and said that she wanted to discuss the rejection.

Q. But you understood that she was wanting a review of that; did you not? A. We, in fact, asked the nursing committee to review it.

Q. And then you authorized the letter of August— strike that. Were you advised after the review as to the results? A. Yes.

Q. Did you discuss with Dean Moore the letter of August 8th, 1974? A. Yes, I was aware of that letter.

THE COURT: What exhibit is that?

Q. That is Exhibit Number 18.

And as far as you were concerned that letter closed out any further review in the matter; did it not?

A. No, it did not.

MR. DIEHL: That's all.

THE COURT: Anything further?

MR. WILLIAMSON: Nothing further, thank you.

[Witness excused].

MR. WILLIAMSON: Mrs. Berry.

Whereupon,

MARY BERRY,

74 was called as a witness by and on behalf of the Defendant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Williamson:

Q. State your name, please, Ma'am? A. Mary Berry.

Q. Are you associated with Southeastern Community College? A. Yes, I am the lead instructor for medical-surgical nursing and part of pediatrics.

Q' Were you associated with the college back in the Spring of 1974? A. Yes, I have been with the college since July of 1968.

Q. Are you acquainted with the situation involving Mrs. Frances Davis? A. Yes, I am.

Q. Mrs. Berry, did you serve on the faculty committee-nursing-faculty committee in the reconsideration of her application for admission to the ADN program at the college? A. Yes, sir. I served on the first time that she was presented to the nursing faculty. After the admissions committee had rejected her application, then they brought it before the nursing faculty, entire nursing faculty, that was in May.

Q. Could you tell us, please, Ma'am, who that committee consisted of, if you remember? A. Mrs. Hill,
75 Miss Hoose, Miss Shaw, Mrs. Riggio, Miss Odum, it was the entire faculty. It was before school was out. I'm not sure, was Miss Ashley there? I'm not sure, Miss Ashley.

Q. No one participated in that except the members of the faculty? A. It was the nursing faculty.

Q. Did you have before you at that time the various information including the medical report regarding Mrs. Davis' hearing problem? A. Yes, we had the complete folder with the exception of Miss McKree's letter and at that time when we were discussing it Mrs. Riggio called Miss McKree because we wanted her opinion then before we went further with our discussion.

Q. Miss McKree, identify her? A. Miss McKree is the Executive Director of the State Board of Nursing. And then after we talked with Miss McKree and had even a more expert opinion, we went ahead with our decision to reject.

Q. Had you had any personal contact with Mrs. Davis? A. No, sir.

Q. Your decision was based upon the records before you? A. Yes, sir, and on my experience as a nurse
76 for 20 years now.

Q. It was your opinion based upon that record that she would not be qualified or suitable as a candidate for the ADN program? A. Yes, sir.

Q. Would you explain to the Court, if you would, please, some reasons that you may have had for reaching that decision? A. Well, I have taught and practiced nursing, this is my 21st year, I guess, in nursing and I have worked in critical care areas for a major part of my—intensive care-coronary care units and now I am in high

risk nursing, so I have worked in ciritical care areas most of my time and when you are in a critical care area you frequently have, well, you do have life and death situations. You frequently will have a patient who is clinically dead that it's your responsibility to say, you have three minutes for the most part to take care of this patient, and if somebody cannot hear me when I call to them or the Doctor's orders when he calls to them to prepare medicine to give a patient you don't have any time to lose. Three minutes goes by in a might fast time. So I felt like it would be impossible for a person with this much hearing deficit to be able to meet the needs of patients in critical care areas.

77 We are not preparing a student, we are preparing a graduate. This is a person who is going to go out to practice nursing. When we are working in our school we are not preparing a student nurse, we are preparing a graduate nurse who can practice safely.

Q. Did you know at that time, Mrs. Berry, that certification to the State Board requires a certificate that a candidate can practice safe nursing? A. Yes, sir, I've known that, I had to take the same examination. I had to have the same form filled out.

Q. Based upon your knowledge of Mrs. Davis' condition, was it your opinion that she could practice safe nursing? A. I do not believe that Mrs. Davis could practice safe nursing in ciritical care areas.

Q. Do you happen to know of your own knowledge how many candiates had applied for the ADN program that year? A. I thought it was 153, was the number that sticks in my mind.

Q. Do you know from your association with the program how many students are admitted to the program? A. We can only take 45 students into our program.

Q. Was the selection process ragarding Mrs. Davis administered in any different way than it was for the other students who had applied for the program?

78 A. Normally, the student is rejected by the admissions committee, which would have been Mrs. Molla Stocks, Mrs. Riggio, Mr. Schmidt, and I've forgotten who the fourth person is, normally this would be it. But then she was brought before the faculty on two occasions, too.

Q. Do you recall whether or not that particular spring any other candidate for the ADN program was shown this much consideration? A. No, sir.

Q. Was there any other applicant that was reviewed by the faculty of nursing that you are telling me about? A. I don't recall any other person who was brought before the nursing faculty.

MR. WILLIAMSON: Thank you, Ma'am.

CROSS EXAMINATION

By Mr. Pate:

Q. Mrs. Berry, if I understood your testimony correctly, what you are saying is you personally have never sat down and talked to Mrs. Frances Davis; have you? A. No, sir, that's correct. I did not talk to Mrs. Davis. I did not know who Mrs. Davis was. I have seen her pictures, but I did not recognize her from the picture.

Q. And you are not an audiologist; are you? A. No, sir, I'm not.

Q. So, therefore, not knowing Mrs. Davis and not being an audiologist, you don't know whether she possesses

79 the requisite hearing to perform her duties or not; do you? A. I do not. I am depending on the professional opinion of the people that I work with that you must talk directly to her. I have not, I would be happy to do that in a critical care situation.

Q. And is it not correct that you based your opinion on an audiologist's report which that committee had; is

that correct? A. On the audiologist's report, on the report from Mrs. Odum who is a professional nurse, on Mrs. Ashley who also did an interview with her and on the basis of other people who had talked with her on the committee.

Q. Well, do you recall the audiologist's report, that being the one from Dr. Burton King? A. I did not know Dr. Burton King's name until I read these reports. I did know that we had an audiologist's report. The man's name did not stick in my head, but I have seen and read the audiologist's report.

Q. And that audiologist's report said that Mrs. Davis' ability to hear was correctible to the outer range of normal; is that not correct? A. That's what the report said.

Q. And basically, if aperson has normal hearing, is there anything that would keep them otherwise qualified from performing the duties of a registered nurse?

80 A. Are you telling me that she has normal hearing because if we are we don't need to be here.

Q. Let me ask you this, did you not just state that you read a report from an audiologist that said that her hearing was correctible to the outer range of normal? A. Yes, I did read that.

Q. Okay. You made reference to many life and death situations in your redirect testimony? A. Yes.

Q. Is it not true, Mrs. Berry, that there are many situations in which a registered nurse could function not involving life and death? A. There are many and I do do that too many times. Thank goodness they aren't all life and death.

Q. In fact, with a degree from the ADN program a person such as Mrs. Davis could become a nurse for an industrial firm involving practically no life or death situa-

tions; isn't that true? A. I do not know that industrial nursing, that's one area that I have not worked in.

Q. With this degree she could go on and get further training to become say an anesthesiologist; is that correct? A. She must be recommended by the faculty saying that she is safe in all areas before she can take her state Board. So, she would not get, we would

81 have to recommend her not, only the Director of the School, but another faculty member has to recommend her safe in all areas of nursing. You can't go to school and become a nurse. If we could we would be happy to have Mrs. Davis. But we can't say that we are preparing Mrs. Davis to function in one area, whether it be industrial nursing or some other area. We have to say that she she is safe in every area when we recommend her to the Board, that means the critical care areas, too.

Q. But it is true, is it not, Mrs. Berry, that there are many areas in the field of nursing in which a person such as Mrs. Davis could function; is that not so? A. Probably there are.

Q. Now when you had this meeting, you had the nursing faculty present; is that correct? A. Yes, sir.

Q. And who was in charge of that meeting?
A. Mrs. Riggio is our director.

Q. Now Mrs. Riggio had already made her mind up about Mrs. Davis' application; had she not? A. Mrs. Riggio had voted on the original committee, yes.

Q. And so would you say that was an impartial meeting, Mrs. Berry? A. I would say that was not an im-

82 partial meeting because we have eight faculty members. We could have easily outvoted Mrs. Riggio.

Q. Is it not true, Mrs. Berry, that everyone who was at that meeting already had their mind made up before the meeting was called? A. We had not. We discussed it in that meeting. Many of us had not had the

opportunity to read the audiologist's report until that meeting, so our minds were not made up. You might call some of the other faculty members.

Q. How long did this meeting take? A. I do not recall. I was a called faculty meeting.

Q. Was it 10 minutes, five minutes? A. Certainly not five minutes. I would never—our faculty would never decide in five minutes the fate of a person that wanted to come to our program. It certainly would not have been five minutes. We couldn't have read the report in that time. Eight faculty members around the table and one or two copies, it takes longer than that just to read the record.

Q. Is Mrs. Riggio or was she at that time your boss?
A. She was the Director of Nursing for the program.

Q. You worked directly under her? A. I did not consider her my boss.

83 Q. You worked directly under her; is that correct?
A. Yes.

Q. At this meeting in which Mrs. Davis' application was to be reconsidered, is it your testimony that Mrs. Riggio was, in fact, already against her being admitted?
A. I'm not saying that Mrs. Riggio was against anything. I'm saying Mrs. Riggio's review data had been presented, with the committee decided that we did not think that Mrs. David would be successful. We had not decided against her, we are for all the students. But we did not think that she would be successful in the nursing program for registered nursing. But Mrs. Riggio did not come to our meeting and say, "Listen now, I have this person who has a hearing defect and all we need is a rubber stamp."

We read the report, we discussed it as a faculty and I discussed why I thought it would be unsafe and each

faculty member did the same thing just as Mrs. Odum was up here this morning telling you why she thought she would be unsafe with her. Each faculty member tried to decide where it would be unsafe and we if we could decide if this person could be safe in nursing and we decided we did not think that she would be.

Q. In the areas dealing with life or death situations; is that correct? A. Also, I don't know whether you
84 consider a surgical unit, operating room a life or death situation or not. There are plenty of doctors in there and there are a lot of other people. This probably would not be a life or death situation but I don't know how many times you have to wait to get a response when you ask somebody for a piece of equipment, you know, I don't know, I wouldn't consider that life and death because there are other people that could reach in and hand it to you, but that would be an area that's not life and death that she still could not function when she has to have a mask and all the other people around her. In the high risk nursey I have to wear a mask and a cap frequently, which deters hearing. You have to yell at people sometimes to make them hear.

Q. You, I believe, work in the clinical area; is that correct? A. No, sir, I teach in the classroom. I'm a lead instructor, I teach in the classroom then I go to the clinical area.

Q. You actually supervise people while they are doing this clinical work; is that correct? A. Yes, I do.

Q. In this meeting, the clinical work was really what you were concerned about as far as Mrs. Davis' ability to do the work; isn't the true? A. Yes.

85 Q. Because everything that you had in that record would indicate that academically she could do the work; is that right? A. Now her grades were good except

for one course in biology which she made a C. We would prefer that our students have a B or better average in biology, but that one grade would not have stopped her from coming into the nursing program.

Q. What you are saying basically she was academically qualified and the reason that her application was rejected was because of her auditory problem; is that correct? A. Yes.

Q. Now isn't it true, Mrs. Berry, that the reason her application was rejected was because the college realized that it would take addition supervision if she were, in fact, admitted to the nursing program? A. It would take a great deal of supervision, but even with that much supervision, sometimes I have a one to four student ratio which is as good as any clinical instructor would ever have, but I still would not at times be able to stay with her. She is still going to have times when she is going to be alone and have to hear things herself. I wouldn't always be there with her and if you're thinking
86 of having one instructor per one student, I'm sure Dr. McCarter would have to close the college, there is no way that we can have that kind and she might, I don't know that she could even do it then if she had a one to one, I don't know.

Q. Because you have never met her; have you? A. No, I have never met her.

Q. Mrs. Berry, now you are aware, are you not, that Mrs. Davis is an LPN? A. Yes, sir, I am aware of that.

Q. And is it not true that a person who undergoes training to become and LPN has to do a certain amount of clinical work? A. Yes, sir, they do.

Q. Wouldn't the fact that she has a license as an LPN indicate to you that she has, in fact, accomplished

this clinical work for LPN? A. The clinical work for an LPN is not the same as the clinical work for an ADN, it goes much deeper in responsibility. An LPN is not left without the supervision of a registered nurse, so that she would always have a registered nurse with her as an LPN. She must work under the supervision of a registered nurse.

Q. Are you telling me, Mrs. Berry, that whenever I go into a hospital and you see these people come in with their name on a tag, they've got LPN after it,

87 they have to have an RN behind them every time they do something? A. They have an RN that gives them every assignment that they do and is responsible for everything they do. I am telling you that is exactly the way the law is written.

Q. Well, let me ask you this, are they actually required by the law to be on the scene when an LPN does a certain task? A. Are you saying do they have to go with an LPN to give a bath, no, I would hope not, but they would have to go with her to do anything that was critical or that they had any feelings that she might not be able to manage on her own. An LPN is not taught in the depth of responsibility that the ADN is.

MR' PATE: No further questions.

REDIRECT EXAMINATION

By Mr. Williamson:

Q. In responding to the questions of Mr. Pate about the information before you, I believe you stated that you were not personally acquainted with Mrs. Davis. Did you have the report of the audiologist, which has been already marked as Plaintiff's Exhibit Number 6 of Mr. Burton King? A. Yes, sir.

88 Q. Did you have this letter dated April 25, 1974,

which has been identified as Plaintiff's Exhibit 8 addressed to Mrs. Riggio? A. Yes, sir.

Q. Did you also have the information from the State Board of Nursing from Mrs. McKree? A. We called Miss McKree on the telephone. We did not have the letter from Miss McKree.

Q. Mrs. Berry, do you know of your own knowledge whether or not there is a period of time after graduation and before a nurse is licensed when they can actually do active duty type nursing? A. Yes.

Q. That is once a student graduates from college and before they are licensed, are there program where they can function say in the hospital after this until they are licensed? A. It's very limited what they can do. Until they become registered they do not assume responsibility for a unit to plan and administer care. They have to be registered before they can do that.

MR. WILLIAMSON: I have no further questions.

[Witness excused].

MR. WILLIAMSON: Dr. Moore.

Whereupon,

89 Dan Moore,

was called as a witness by and on behalf of the Defendant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Williamson:

Q. Would you state your name? A. Dan Moore.

Q. Dan, are you associated with Southeastern College? A. Yes, I am.

Q. In what capacity? A. I am dean for student development.

Q. Were you with the college back in the spring of

1974? A. No, I was not, I joined the college on May 27, 1974.

Q. Now are you familiar with the situation of Mrs. Frances Davis? A. Yes, I am.

Q. Do you recall whether or not you met in Dr. McCarter's office sometime during the month of June in response to her presence? A. Yes, sir, I did.

Q. Would you describe the circumstances surrounding that meeting, as you recall? A. I remember Dr. McCarter calling me and asking me to come to his office. When I got there, there were other people there, the

90 Davis were there and others that have been mentioned. Then I met with the group at that time.

Q. Now were you familiar with or did you have personal knowledge at that time of the situation of Mrs. Davis that she had not been admitted to the ADN program? A. I was aware at that time of the admissions list even though I was new.

Q. What transpired at the meeting, Dr. Moore? A. There was a discussion, the best of my recollection at that meeting, about Mrs. Davis not being admitted and the results was Dr. McCarter saying to Mrs. Davis that her application for admission would be reconsidered by the nursing faculty and also at that meeting and following that meeting I was instructed to coordinate getting in any additional materials that were needed.

Q. Do you recall at that meeting while Mrs. Davis and Mr. Davis was present whether or not Dr. McCarter had any conversation regarding the procedure she might follow in the event she was not satisfied with the decision at reconsideration? A. I do not recall the exact statements at that meeting. I can only assume based on his normal behavior that that would be true.

Q. What did you then do following the meeting

with respect to a review of her case? A. We

91 agreed to contact potential employers.

And at that time I made a telephone call to the persons at Southeastern General Hospital followed by a letter to those persons. I also wrote a letter to Miss McKree at the State Board of nursing, asked her specific questions about Mrs. Davis' licensing. We already had an audiologist's report. I did not contact him again.

Q. Dr. Moore, with reference to the letter which you wrote to Miss McKree, I hand you a paperwriting which has been identified as Plaintiff's Exhibit Number 13 purporting to be June 26, 1974 and ask you if this is a copy of the letter which you addressed to Miss McKree? A. Yes, it looks like that letter.

Q. I hand you another letter which has already been identified as Plaintiff's Exhibit Number 14 purporting to be a letter dated July 14, 1974 from Miss McKree to you, is this letter from Miss McKree in response to the letter you wrote her on June 26th? A. Yes, it is.

Q. Do you recall whether or not this letter dated July 14, 1974, was made available to the faculty committee in its reconsideration of Mrs. Davis' application? A. I believe that it was since my role was to gather the several pieces of information and turn them over to Mrs. Riggio for their consideration.

92 Q. Dr. Moore, would you, please, read that letter to us? A. "In response to your letter of June 26th, we reiterate our opinion given in our letter addressed to Mrs. Virginia Riggio on May 17. We, therefore, refer you again to that letter in which we enumerated several concerns, specifically, one requirement for eligibility to write the State Board Test Pool Examination leading to licensure as registered nurse (or to licensed practical nurse where appropriate) includes evidence that an ap-

plicant has no limitations physically, emotionally, or mentally to prevent the applicant to practice nursing after license without restriction of any kind on the license.

From the facts presented in Mrs. Riggio's letter and the audiologist's report of Mrs. Davis's hearing capacity, it is our opinion that Mrs. Davis has hearing limitations which could interfere with safely caring for patients. This very situation also in our opinion could be highly frustrating to Mrs. Davis. Again, from our letter to Mrs. Riggio of May 17, we do not believe on the basis of the facts we now have that Mrs. Davis would either be safe for herself or for patients, or for the faculty to pursue a nursing education program. We can not at this time predict eligibility or ineligibility for licensing examination should Mrs. Davis be enrolled and allowed to com-

93 plete the program some several years hence. We reiterate that each applicant for licensing examiantion must provide evidence that he or she is able, if licensed, to practice nursing as legally defined without any restrictions."

Q. Now following receipt of that letter and reconsideration by the faculty committee of Mrs. Davis' application, did you receive a report from the faculty committee about their reconsideration? A. I received a memorandum from Mrs. Riggio telling me that she had done the reconsideration and I believe she specifically cited the State Board's report and the Audiologist's report and she said that they were standing behind their original decision to reject Mrs. Davis.

Q. Do you recall the date you received that memorandum from Mrs. Riggio? A. July 24, 1974.

Q. I now hand you another paperwriting which has been identified as Plaintiff's Exhibit 18, which purports

to be a letter dated August 8th, 1974, by you to Mrs. Frances B. Davis. Is that the letter that you wrote Mrs. Davis following the meeting of the faculty committee and their reconsideration for application? A. Yes, it is.

Q. Now following the mailing of that letter, Dr. Moore, did you have any further contact with Mrs. Davis? Did she get back in touch with you?

94 THE COURT: What was that exhibit number, that last exhibit?

Q. 18, Your Honor.

Did you have any further contact by Mrs. Davis about the matter? A. I wrote Mrs. Davis on the 14th of August and sent her copies of the letters we had received because they were inadvertently omitted from the August 8th letter.

The next contact that I remember from Mrs. Davis was she came to my office the following Spring. I assume early May, because I have letters that I wrote on her behalf towards the end of May asking permission of the audiologist and Miss McKree to give her a copy of their letters. She came to see me to ask for copies of that material and she said she had misplaced hers and did not have them available. That was the next contact I had with her that I can recall.

Q. When was that Dr. Moore? A. My letter to Mrs. Davis followed her request is dated May 22nd which tells her that I am sending her a copy of the August 8th letter or the previous letter and then I wrote to Burton King and Mrs. McKree on the 23rd of May '75 asking their permission to give Mrs. Davis copies of their previous letters.

95 Q. Specifically, after your August 8th letter of 1974, did you have any request for additional appellate review

by Mrs. Davis? A. No, I did not hear from her.

Q. No request addressed to you to call a grievance committee together or anything of that type? A. No.

* * * *

96

CROSS EXAMINATION

By Mr. Diehl:

Q. Dean Moore, you were involved in some letters to and from a Mrs. Johnson at Southeastern Community Hospital; were you not, sir? A. That's true.

Q. And specifically a letter of July 1, 1974 was received, this being Plaintiff's Exhibit Number 15 from Mrs. Johnson. You wrote a letter of July 8th, which is Exhibit number 16, which was responded to on July 10th, and that is Plaintiff's Exhibit Number 17. In those series, in that series of letters you requested Mrs. Johnson to advise you as to whether or not she would employee Mrs. Davis in an RN capacity at Southeastern General; is that correct? A. Yes, it is, should she be registered.

Q. Yes, and Mrs. Johnson told you that she would; is that not also correct? A. She did specifically cite, reading from the letter, "Mrs. Davis could also handle the nigh assignment on postpartum and so forth," yes.

Q. In reference to the July 1st letter, the last paragraph states that she was of the opinion that she did not believe there was any area in which Mrs. Davis could not function in her present condition if she was allowed

97 to continue her education; is that not correct?

A. Her letter says, "I do not believe I can truthfully state she would not be able to function in any area of nursing."

Q. You then wrote to Mrs. Davis on the 8th of

August, this being Plinaitff's Exhibit Number 18 and in the letter of the 8th day of August set forth, the reasons for not accepting Mrs. Davis' application; is that correct?

A. That is true.

Q. And at that point the first and primary reason was that in your or in the college's opinion, she would not be licensed as an RN? A. She was told in the meeting with Dr. McCarter that her application would be reviewed and information would be collectedd regarding her licensing, regarding employment and also regarding her nursing faculty and those are the three points that are made in that letter.

Q. Of course, you wrote to Mrs. McKree on approximately the 26th of June; did you not?

A. Yes, I believe I did.

Q. And Mrs. McKree responded to you on the 14th of July in a letter which is Plaintiff's Exhibit Number 14? A. Right.

Q. And at that time she told you that she could not predict the outcome of licensing; is that correct?

98 A. That's true.

Q. Mr. Moore, Dean Moore, did you have any opportunity to converse individually with Mrs. Davis?

A. Only into the meeting in Dr. McCarter's office. I did not see Mrs. Davis other than that meeting and the next spring when she came back to my office.

Q. In the meeting in Dr. McCarter's office or attendent there to, did you at any time make a statement to her that you believed she ought to have an opportunity to prove herself in the educational system and the qualifications for the ADN program? A. I don't believe I made that statement.

Q. Dr. It is Dr. Moore, I assume, are you a PHD?

A. Yes.

Q. Dr. Moore, are you involved in the administration

or are you familiar with the administration of any Federal financial assistance?

THE COURT: That's stipulated. That's stipulated; isn't it?

MR. DIEHL: Yes, it is stipulated, Your Honor, I was asking if this gentleman himself were involved.

THE COURT: What would that have to do with it?

MR. DIEHL: I would ask, if your honor, please, if he is familiar with the non-discrimination against handicap clause that is involved in those grants.

99 THE COURT: Ask him the question. It doesn't make any difference what his answer is as far as I am concerned. A. Are you asking me?

Q. Yes? A. First the financial aid office and the director of the financial aid office reports to my office, so I am involved in it to that extent.

Q. Are you familiar with any non-discrimination against handicapped clauses in Federal assistance programs? A. I could not cite a specific act or law in which that is true. I am assuming that there probably are regulations to that effect.

Q. Now Dean Moore, are any programs for the college specifically designed to take into consideration or to aid people who are suffering from handicaps? A. The college does make facilities available for persons who are handicapped, for example, a student who is enrolled currently has classes scheduled on the first floor of a building because he is totally confined to a wheelchair.

Q. No curriculum has been developed that would, specifically, be designed to aid persons who are handicapped; is that correct, that you know of? A. If I understand you correctly, no.

MR. DIEHL: Thank you, sir.

MR. WILLIAMSON: Dr. Moore, let me ask you one more question.

100 REDIRECT EXAMINATION

By Mr. Williamson:

Q. Do you know of your own knowledge whether or not Mrs. Davis was, in fact, offered other avenues to study when she was not allowed to enroll in the nursing program? A. I do know that in my letter I suggested to her that should she desire to talk further with me or others, such as Mrs. Stocks, about alternatives, whether it be at Southeastern or another school, because we make a practice of attempting to assit students in going to other institutions. We did extend that offer sincerely.

MR. WILLIAMSON: Thank you.

[Witness excused].

MR. WILLIAMSON: Miss Shaw.

Whereupon,

C. PRICE SHAW,

was called as a witness by and on behalf of the Defendant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Williamson:

Q. Would you state your name, please, Ma'am? A. C. Price Shaw.

Q. Are you associated with Southeastern Community College? A. Yes, sir, I am.

101 Q. In what capacity? A. I am clinical instructor for both Freshmen and sophomore students in the ADN program.

Q. How long have you been with the college? A. Six years.

Q. Did you know Mrs. Frances Davis prior to the time in question when she enrolled or applied for enrollment in the ADN program at the college? A. Yes, sir.

Q. Where had you known her before? A. Practical nursing school at Robinson Tech.

Q. Is that Robinson Tech? A. Yes, sir.

Q. Now were you at Southeastern Community College at the time she came and enrolled–

THE COURT: Is that Robinson Tech?

A. Robinson.

Q. Were you at the Southeastern College in the fall of 1973 when she enrolled in that program that year?
A. I was employed at the college.

Q. And at that time were you on the nursing staff?
A. Yes, sir.

Q. Were you, at that time, involved with the first and second year students? A. Yes.

102 Q. In the same capacity as now? A. Yes.

Q. Did you have an opportunity to see or talk to Mrs. Davis during that period of time since you had known her previously? A. I saw her on a couple of occasions just as a student on campus.

Q. Miss Shaw, did you serve on the selection committee of nurses that convene in the month of May, 1974, for the first review of her application?
A. No, sir, not the first review.

Q. Did you serve on one of the committees?
A. Just in the faculty meeting when the faculty meeting was called.

Q. At that time were there other nurses from the college faculty present? A. All the nursing faculty.

Q. All the nursing faculty? A. Yes.

Q. What was the purpose of that meeting? A. To review the case of Mrs. Davis.

Q. You had known her? A. Yes, sir.

Q. Do you know of your own knowledge whether or not anybody else on the panel at that time had

known her previous to that? A. I don't think so.

Q. At that time did you have before you the various information that we've discussed in the trial of the case today, that is the audiologist's report, the report from Mrs. McKree and also the report from Burton King?
A. Yes, sir, I believe at that time Miss McKree was called by phone but the other reports were present.

Q. Did you at that time, based on the information available, vote to not admit Mrs. Davis to the ADN program? A. Yes, I did.

Q. Would you state your reasons, Ma'am?
A. My reasons for voting negative to accept her into the program was because I had had her as a practical nursing student and I was aware of the hearing impairment and I did not feel that it was safe for the patient or safe for the student to enroll into the ADN nursing program.

Q. Had you communicated that information to Mrs. Davis? A. Just today.

Q. Just today? A. Yes.

Q. Were you familiar with the admission criteria which were mentioned in the trial of the case today?

104 A. Yes, sir.

Q. And were you guided by the portions of the admissions criteria in determining her qualifiactions to be admitted to the program? A. Yes, sir.

Q. Miss Shaw, was Miss Davis treated any differently than other applicants in the program that year?
A. Not to my knowledge.

Q. I will ask you whether or not she was given the same objective evaluation that the other students were and that her rejection was based entirely upon the record that you had including her physical impairment?
A. To my knowledge, this is correct.

Q. Now would you tell me again, Please, Ma'am, what you actually do at the college? A. I am clinical instructor for both first year and second year ADN nursing students.

Q. So you are the clinical instructor which means you are with the student in the clinic or in the hospital; is that right? A. Yes.

Q. What areas of clinical instruction do you supervise? A. Medical surgical.

Q. Miss Shaw, how long have you been an instructor in the nursing program? A. At Southeastern or
105 total?

Q. Well, I really would like to know entirely. How long have you been at Southeastern first? A. Six years.

Q. Where were you before you went to Southeastern? A. I came from Robinson Tech which is a male PN program for one year. Previous to that, two years at the Diploma School at Southeastern General Hospital's School of Nursing and one year at the Mt. Surry School of Nursing.

Q. I'll ask you, Miss Shaw, whether or not it's been your experience that in order to properly evaluate the performance of a prospective nurse that it requires from a clinical standpoint an extended period of time in order to determine her suitability? A. I think I could say, yes, in most cases you have some time span there to determine the student's suitability.

Q. What was it about Mrs. Davis personally that in her record before you that made you feel that she could not serve in the clinical portion of this program? A. To me it was the hearing impairment.

Q. How would that have affected her as a member of your clinical team? A. Would you repeat the question, please?

Q. How would her hearing impairment that you were familiar with have affected her role in your clinical team?
106 A. As a student in the ADN program, we teach the student the principles that are used in the assessment of a patient's condition. They are taught the theory that goes along with the disease process and upon this their knowledge of principles and theory they have to make an assessment of the patient's condition. With this assessment they make a plan to meet the needs of the patient, then they implement the plan and I find that in collecting this theory and information in order to make a plan of care, that all senses are necessary, sight, hearing, touch are necessary in order to make an accurate and safe assessment.

Q. Did you know at that time that Mrs. Davis actually depended upon lip reading to communicate with people? A. Yes, sir, I did.

MR. WILLIAMSON: No further questions.

CROSS EXAMINATION

By Mr. Diehl:

Q. Miss Shaw, you first knew Mrs. Davis when you were a teacher at Robinson Tech? A. That's right.

Q. Were you also clinical director there? A. Yes, sir.

Q. So Mrs. Davis took her LPN clinical work under you direction? A. Yes, sir.

107 Q. And under your supervision? A. Yes.

Q. Now were you required there to provide any additional kind of supervisory detail to be able to work with Mrs. Davis because of her hearing impediment? A. Yes, sir, I did have to get her attention to where I could see her to communicate with her.

Q. Now, in other words, you are saying that at Robinson Tech you understood she had a hearing impair-

ment and you customized or modified the clinical program supervisory duties so as to be able to work specifically with her and make sure she followed the program and kep up with the instructions; is that right? A. Yes, and I did this may I add?

Q. Yes, Ma'am? A. I did this because at the level at which an LPN works, I deemed that it was safe for her to work at this level in the health field and therefore I put out an extra effort to help her meet this degree of success.

Q. Now Miss Shaw, at Robinson Tech, Mrs. Davis' grades grades were for the most part A's and B's; were they not? A. I do not remember but she did qualify in the period.

Q. And she became licensed as an LPN in 1967? A. Yes.

Q. Now in the clinical work at Robinson Tech, excuse me, at Southeastern in the ADN program, your
108 supervisory capacity consits for the most part, in some cases of working with say one supervisor to four students in the more demanding areas and sometimes one supervisor to eight to ten students in the less demanding areas; is that correct? A. Yes, sir.

Q. In every case the supervisors are responsible for the actions of the students; is that not also correct? A. Yes, sir.

Q. And in the critical areas such as the coronary unit or units of a comparable type, the students are really mere observes as to what takes place in those areas, is that not also correct? A. No, sir, they are given some responsibilities in this area.

Q. But they are not left in charge of the cardian unit though, are they? A. No, sir.

Q. There is always the regular hospital staff and/or

you in the supervisory capacity there? A. Yes, sir.

Q. During the time that they would be taking clinical instructions, they would be assigned to certain patients and do a work up on those patients; is that correct? A. Yes, sir.

109 Q. Providing, putting into practice or outlining in practical form the theory that they have learned from the classroom instruction as to what should be the proper care for that patient; is that correct? A. Yes, sir.

Q. Now again, at best, it's maybe a one instructor for four student basis; is that also correct? A. Yes, it could be.

Q. Miss Shaw, you never tried to device a supervisory program that would take care of someone with a handicap such as Mrs. Davis'; did you? A. No, sir, I did not.

Q. And you are not saying now that it could not be done to the place where it would be impossible to supervise Mrs. Davis by a modification of the present supervisory system that is used at Southeastern; are you? A. I think I am, let me explain, the difference in the LPN and Associate Degree Nursing, we have to allow the Associate Degree Nursing student leeway to collect data, make her assessment for the plan that is necessary to meet the patient's needs and we are evaluating that student on her ability to make this assessment because once the student is graduated we cannot go with them on through life in their practice to see that they make the correct judgments. So we do have to give the Associate Degree Student leeway to make her assessment
110 with minimal supervision on their part. Of course, we step in when we see that action is wrong that would

be detrimental to the patient, we step in at that time.

Q. You never tested Mrs. Davis to see whether or not she could observe the various signs and signals and be able to provide the outline for a program; did you? A. No, sir, I did not. I made my decision based upon the fact that I had known Mrs. Davis as a practical nursing student and I felt like I understood her hearing impairment and I did not feel like it would be safe for her, the patient or the instructor for her to be enrolled in the Associate Degree program.

MR. DIEHL: Thank you.

Questions by the Court:

Q. Let me ask you something, as to your instruction was in the first two years of the course; is that right? A. Yes, sir.

Q. Freshman and sophomore? A. Yes, sir.

Q. Was it a three year course? A. The Associate degree is a two year course.

Q. Two year course? A. Yes. The Hospital Diploma School is three year.

Q. You were the clinical instructor for each of those
111 years? A. That's right.

Q. After the first year I gather they go into the critical care? A. That's correct.

Q. Does that include the place they put you after they take you out of the operating room? A. The operating room, the coronary care.

Q. Intensive care? A. Intensive care.

Q. And so on? A. Yes.

[Witness excused].

MR. WILLIAMSON: Your Honor, we would like to recall Mrs. Hayes for two or three questions.

Whereupon,

ANNIE O. HAYES,

was called as a witness by and on behalf of the Defendant, and having been previously duly sworn, further testified as follows:

DIRECT EXAMINATION

By Mr. Williamson:

Q. Were you present in Dr. McCarter's office the day that Mr. and Mrs. Davis came to the college? A. No, I was not.

112 Q. Following that were you summoned as part of the faculty committee to reconsider the application of Mrs. Davis? A. Yes, I was.

Q. Did you participate in that particular meeting? A. Yes, I did.

Q. Do you recall approximately when it was? A. A. I don't recall the actual date.

Q. Now who was present with you? A. The other faculty members which was Mrs. Hoose, Mrs. Riggion, Mrs. Shaw and Mrs. Hill and, well, Mrs. Berry was there that day.

Q. And at that time did you have any knowledge of the fact that Dean Moore had written these various people to get additional information on Mrs. Davis' condition? A. Right now I don't recall that we discussed that too much, it was, you know, I don't actually remember the sequence of the various letters and so on.

Q. As a result of that meeting the faculty committee was reconvened? A. Right.

Q. Would you tell us what, if anything, the committee did at that time with reference to her application? A. As I recall I think that one of the—my main concern after I had done an initial interview and then at this time I did look at the other information

which I had not done before that we had. My concern
113 was in Mrs. Davis' ability to function safely as a student in the clinical area and my basis for questioning this and also my vote not to accept her as a student, even after reconsidering the information was as I mentioned before that we carry malpractice insurance and we are responsible for the student and what she does in the clinical area and I did not think in the areas in which I worked with students that I could be responsible for Mrs. Davis.

Q. Mrs. Hayes, clinical experience comes from direct patient– A. Right?

Q. –nurse relationship. In other words, in order to get clinical experience, you work directly with patients? A. Yes, you do.

Q. Was this the area that you felt Mrs. Davis could not function because of this hearing problem that has already been testified to? A. Right and one of the areas that I was thinking about was where you have a patient or you may have two or three patients, you may have machinery and equipment, it could be a noisy area and I know that sometimes it's difficult to hear in these areas and to follow through with everything that's going on even if you have good hearing and this was
114 one of the things that I felt that she had, you know, it would just not be fair to her to subject her to this.

MR. WILLIAMSON: No further questions.

CROSS EXAMINATION

By Mr. Diehl:

Q. Did you ever consider working in a supervisory capacity with Mrs. Davis on a one on one basis? A. No, I still would not accept the responsibility.

MR. DIEHL: No other questions.

[Witness excused].

MR. WILLIAMSON: That's the defendant's evidence.

THE COURT: Anything in reply?

* * * * *

MR. DIEHL: No, Your Honor.

* * * * *

PLAINTIFF'S EXHIBIT # 1

REPORT CARDS OF FRANCES DAVIS FROM FAYETTEVILLE (ROBESON) TECH FOR L.P.N. COURSE

FAYETTEVILLE TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: Davis, Frances B.

Curriculum: Prac. Nursing — Quarter: 1st

Course Number: PN 1102 — Credit Hours:

Final Grade: C — Contact Hours: 84

Instructor: Sue P. Shaw

FAYETTEVILLE TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: Davis, Frances B.

Curriculum: Prac. Nursing — Quarter: 1st

Course Number: PN 1101 — Credit Hours:

Final Grade: A — Contact Hours 30

Instructor: Sue P. Shaw

FAYETTEVILLE TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: Davis, Frances B.

Curriculum: Prac. Nursing — Quarter: 1st

Course Number: PN 1103 — Credit Hours:

Final Grade: B + — Contact Hours 125

Instructor: Sue P. Shaw

FAYETTEVILLE TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: Davis, Frances B.

Curriculum: Pract. Nursing Quarter: 1st

Course Number: PN 1104 Credit Hours:

Final Grade: C - Contact Hours: 24

Instructor: Sue P. Shaw

FAYETTEVILLE TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: Davis, Frances B.

Curriculum: Prac. Nursing Quarter: 1st

Course Number: Clinical Nursing Credit Hours:

Final Grade: C + Contact Hours: 60

Instructor: Sue P. Shaw

100a

FAYETTEVILLE TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: Davis, Frances B.

Curriculum: Prac. Nursing Quarter: 1st

Course Number: Eng. 1101 Credit Hours:

Final Grade: C Contact Hours: 33

Instructor: Virginia B. Smith

STUDENT'S FULL NAME: Davis, Frances B.

Curriculum: Prac. Nursing Quarter: 2nd

Course Number: PN 1107 (Med. Surg.) (I) Credit Hours: 8

Final Grade: B - Contact Hours: 230

Instructor: Sue P. Shaw

101a

FAYETTEVILLE TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S **FULL NAME:** **Davis, Frances B.**

Curriculum: **Pract. Nursing** **Quarter:** 2nd

Course Number: PN 1105 (Nutrition) **Credit Hours:** 4

Final Grade: B - **Contact Hours:** 48

Instructor: Sue P. Shaw

102a

FAYETTEVILLE TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: **Davis, Frances B.**

Curriculum: **Prac. Nursing** **Quarter:** 2nd

Course Number: Math **Credit Hours:** 3

Final Grade: C **Contact Hours:** 33

Instructor: Thomas E. Williams

FAYETTEVILLE TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: **Davis, Frances B.**

Curriculum: **Prac. Nursing** **Quarter:** 2nd

Course Number: PN 1106 (N/Skills) (II) **Credit Hours:** 3

Final Grade: C + **Contact Hours:** 56

Instructor: Sue P. Shaw

103a

STUDENT'S FULL NAME: **Davis, Frances B.**

Curriculum: **Prac. Nursing** **Quarter:** 3rd

Course Number: PN 1113 (Geriatrics) **Credit Hours:** 4

Final Grade: A **Contact Hours:** 72

Instructor: Sue Shaw

FAYETTEVILLE TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: **Davis, Frances B.**

Curriculum: **Pract. Nursing** Quarter: 3rd

Course Number: PN 1114 (Ment. Heal) Credit Hours: 3

Final Grade: B + Contact Hours: 24

Instructor: Sue P. Shaw

104a

FAYETTEVILLE TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: **Davis, Frances B.**

Curriculum: **Prac. Nursing** Quarter: 3rd

Course Number: PN 1112 (Med Surg.) (III) Credit Hours: 6

Final Grade: B + Contact Hours: 144

Instructor: Sue Shaw

FAYETTEVILLE TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: **Davis, Frances B.**

Curriculum: **Prac. Nursing** Quarter: 3rd

Course Number: PN 1117 (Communicab-(le Disease) Credit Hours: 2

Final Grade: B + Contact Hours: 24

Instructor: Sue P. Shaw

105a

STUDENT'S FULL NAME: **Davis, Frances B.**

Curriculum: **Prac. Nursing** Quarter: 3rd

Course Number: PN 1110 (Med. Surg.) (II) Credit Hours: 2

Final Grade: B Contact Hours: 46

Instructor: Sue Shaw

FAYETTEVILLE TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: Davis, Frances B.

Curriculum: Pract. Nursing **Quarter:** 3rd

Course Number: PN 1111 (Drug Adm.) **Credit Hours:** 2

Final Grade: A - **Contact Hours:** 39

Instructor: Sue P. Shaw

106a

ROBESON COUNTY TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: Davis, Frances B.

Curriculum: Prac. Nurs. QUARTER: 4th

Course Number: PN 1112 Med Surg. Credit Hours: 1

Final Grade: 92 B + Contact Hours: 72

Instructor: Sue P. Shaw, R.N.

ROBESON COUNTY TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: Davis, Frances B.

Curriculum: Prac. Nurs. Quarter: 4th

Course Number: PN 1108 Nurs. Childr. Credit Hours: 5

Final Grade: 93 A - Contact Hours: 132

Instructor: Sue P. Shaw, R.N.

107a

ROBESON COUNTY TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: Davis, Frances B.

Curriculum: Prac. Nurs. **QUARTER: 4th**

Course Number: PN 1116 (Voc. Adj.) **Credit Hours:** 2

Final Grade: 91 B + **Contact Hours:** 16

Instructor: Sue P. Shaw, R.N.

ROBESON COUNTY TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: Davis, Frances B.

Curriculum: Prac. Nurs. Quarter: 4th

Course Number: PN 1109 Nurs. Mother Credit Hours: 5

Final Grade: 93 A - Contact Hours: 132

Instructor: Sue P. Shaw, R.N.

ROBESON COUNTY TECHNICAL INSTITUTE -- REPORT CARD

STUDENT'S FULL NAME: Davis, Frances B.

Curriculum: Prac. Nurs. Quarter: 4th

Course Number: PN 1114 Family Units Credit Hours: 1

Final Grade: 93 A - Contact Hours: 12

Instructor: Sue P. Shaw, R.N.

FINAL QP AVERAGE 3.0

PLAINTIFF'S EXHIBIT NO. 2

CERTIFICATE NO. 9581 of N.C. BOARD OF NURSING issued to Plaintiff.

North Carolina Board of Nursing

CERTIFIES THAT

FRANCES BURCHETTE DAVIS

has this day been licensed according to the laws of the State of North Carolina relating to nursing, and is entitled to practice as and to hold and use the title of

Licensed Practical Nurse

In Witness Whereof, we the undersigned have hereunto set our hands and caused the seal of this Board to be affixed this the 6th *day of* November 19 67

Certificate No. 9,581

Elaine C. Heins
CHAIRMAN

Jessie D. Ferris
SECRETARY

PLAINTIFF'S EXHIBIT NO. 3

ADMISSION CRITERIA FOR A.D.N. PROGRAM AT COLLEGE

SOUTHEASTERN COMMUNITY COLLEGE
ADMISSION CRITERIA FOR ASSOCIATE DEGREE NURSING PROGRAM

Prospective students must meet the following criteria in order to qualify for admission to the Associate Degree Nursing Program at S.C.C. This program can be completed in two years or in three years at Southeastern Community College. These criteria are listed below.

TWO-YEAR PROGRAM

High School Graduate

High School Subjects Required:
- Biology
- Chemistry
- Algebra

These subjects can be taken at S.C.C. prior to entrance into the Associated Degree Nursing Program. Advanced Biology recommended when possible.

Class Standing

Top half of graduating class

College Guidance & Placement Test Scores

Year 2000 - National percentile of 36
Letter Group - National percentile of 42

If the student achieves one of the required scores but not the other, he/she could still qualify if the score on the other test does not ball below the 25th percentile.

Consideration will be given to students over 30 years of age who achieve low scores on these tests.

Interview

Each prosepctive student will be interviewed by the Nursing Faculty.

Application Folder

Student's application folder in the Student Development Center

should be completed by March, thus ensuring early consideration for admission to the class beginning the following September.

SELECTION PROCESS

Student's application folder must include the following:
- High school record
- College transcripts, if previously attended another college
- Suitability for Nursing forms - 2 required
- Medical record - serious consideration given to existing health problems
- Dental record
- Interview guides
- College Guidance & Placement Scores

See catalogue for regular two-year program

THREE-YEAR PROGRAM

New high school graduates should give consideration to enrolling in the three-year nursing stretch-out program and completing the related subjects prior to being considered for the nursing program. These students are given first consideration in the selection process each year.

High School Graduate

Same requirements as listed for two-year program

Class Standing

Top half of graduating class

College Guidance & Placement Test Scores

Those students enrolled at S.C.C. in the three-year program should have admission scores on the College Guidance & Placement Test of:
- Year 2000 - National percentile of 20
- Letter Groups - National percentile of 20

Condsideration will be given to students over 30 years of age who achieve low scores on these tests.

College Grade Point Average

Those students enrolled at S.C.C. in the three-year program are expected to achieve and maintain a 2.5 Grade Point Average.

Interview

Nursing faculty interview required.

Selection Process

Students enrolled in the three-year program will be evaluated at the beginning of spring quarter.

Application folders must include:

- High school record
- College transcripts - S.C.C. & transfer
- Suitability for Nursing forms - 2 required
- Medical record - serious consideration given to existing health problems
- Dental record
- Interview guides
- College Guidance & Placement Test Scores
- S.C.C. grades achieved fall and winter quarters
- Those students who may have enrolled for the first time winter quarter will be evaluated at the end of spring quarter.

Three-year students are given first consideration in the selection process each year.

Sample Stretch Out Program

Fall Quarter

Eng 101 Freshman English	4
Psy 101 Psychology of Learning	2
Bio 101 General Biology	4
Ped 101 Physical Education	1
Nur 101 Introduction to Nursing	1
	12 credits

Winter Quarter

Eng 102 Freshman English	3
Psy 201 Psychology	5
Ped 102 Physical Education	1
Bio 204 Anatomy & Physiology	5
Nur 101 Introduction to Nursing	1
	15 credits

Spring Quarter

Eng 103 Freshman English or	3
Eng 211 Public Speaking	5
Bio 205 Anatomy & Physiology	5
Soc 201 Introduction to Sociology	5
Ped 103 Physical Education	1
Nur 102 Introduction to Nursing	1
	15 or 17 credits

Subject to revision

PLAINTIFF'S EXHIBIT NO. 4

APPLICATION FOR ADMISSION OF PLAINTIFF TO ASSOCIATE DEGREE NURSING PROGRAM AT SOUTHEASTERN COMMUNITY COLLEGE

116a

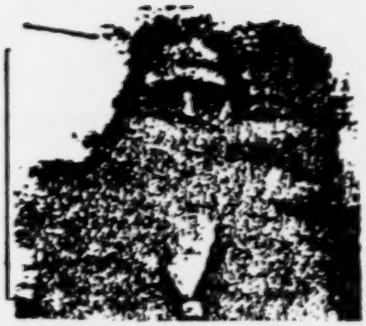
DO NOT WRITE IN THIS SPACE

SOUTHEASTERN COMMUNITY COLLEGE
WHITEVILLE, NORTH CAROLINA 28472

APPLICATION FOR ADMISSION

To the applicant: Type or print in ink. All questions must be completely and accurately answered. Use full legal name as it appears on birth certificate or court order.

P/T
#4



SECTION I BIOGRAPHY

Name (Last)	(First)	(Middle/Maiden)
Davis	Frances	Burchette

Address (Permanent) Street and Number/RFD	City
409 Friendly Street	Fairmont

Telephone	County	State	Zip
919-628-1558 919-628-4531	Robeson	North Carolina	28340

Date of Birth: Month Day Year Born	Sex: Male	Female	Marital Status: Married	Single	Divorced	Widow(er)
August 31 - 1932	☐	☒	☒	☐	☐	☐

Social Security Number	Veteran Yes	No	Citizenship: United States: ☒ Yes: ☐ No. If no, citizen of
242-42-3442	☐	☒	

SECTION II GENERAL INFORMATION

Check Term you plan to enter: ☐ Fall: ☐ Winter: ☐ Spring: ☒ Summer, 19 73

Indicate your planned major area of study. If undecided, so indicate.

Nursing

Do you plan to board at an address other than your permanent one while attending S. C. C.? ☐ Yes: ☒ No: ☐ Undecided

Occupation or professional plans upon graduation:

Public Health Nursing

Have you taken the Comparative Guidance and Placement Test (CGP) at S. C. C.? ☐ Yes: ☒ No.

When did or when do you plan to take it?

waived I

SECTION III SECONDARY SCHOOL INFORMATION

Name of High School last attended: Philadelphus High School

Have principal or counselor send copy of secondary school transcript.

FOR N. C. RESIDENT:
This is to certify that my parents or I will have been legal residents of North Carolina for the 12 months immediately preceding the date on which I intend to enroll at Southeastern Community College.

Frances B. Davis
Signature

FOR COASTAL PLAINS RESIDENT:
This is to certify that my legal residence is in the Coastal Plains area of South Carolina or Georgia.

Signature

FOR NON-N. C. RESIDENT:
In applying for admission to Southeastern Community College, I acknowledge my status as an out-of-state student.

Signature

I certify that the above information is complete and correct to the best of my knowledge and belief. I further understand that falsification or failure to supply the correct information may lead to disqualification of my application and/or charges under the Code of Conduct.

I further understand that my application for admission is not complete until my high school transcript and college transcripts, my photograph, and a completed medical and immunization record signed by a physician have been received by the college.

Date 3-5-73 Signature (in ink) Frances B. Davis

117a

Pre-entrance Medical Record

School of Nursing Southeastern Community College

Address [illegible] N.C. 28472

The medical examiner is requested to make a careful physical examination. Otherwise, defects found after admission may lead to the rejection of the applicant.

Name of applicant (Mrs. Mr. Dr.) Davis (Last name) Frances (First name) B. (Middle name)

Date of birth Aug (Month) 31 (Day) 1932 (Year) Weight 195 Height 69"

A. Medical History of Family, with Special Reference to Chronic Illness and Mental or Nervous Disorders

none

B. Medical History of Applicant

1. Any hoarseness, cough, or shortness of breath on moderate exertion no
2. Tuberculosis no Type
3. Epilepsy, any mental disorder, emotional instability, or headache no
   Treatment, if any
4. Rheumatism or rheumatic fever no
5. Heart disease no
6. Hay fever, asthma, eczema, or other allergic reaction including drug reactions none
   Is treatment required? no If so, specify
7. Menstruation: Regular ✓ Irregular Pain
   Is bed rest required? no If so, how long

118a

8. Childhood diseases measles, mumps
9. Other diseases no
10. Operations D + C (one)
11. Injuries none

C. Physical Examination

1. Condition of:
   Eyes Nystagmus on lateral gaze - moved. Sinuses negative.
   Ears some decrease in hearing Skin clear -
   Throat (adenoids and tonsils) normal Thyroid normal -
   Nose Negative
2. Chest measurements in full expiration After full inspiration
   Lungs clear - Abnormal signs normal
3. Heart: Size normal Sound normal Murmurs none Rhythm regular
   Rate and rhythm of pulse 72 regular Blood pressure 130/80
4. Abdomen: Scars none Tenderness none Palpable masses none
5. Urine: Quantity Sp. gr. 1.015 Protein negative Sugar negative
6. Posture excellent

119a

7. Condition of feet and arches excellent

8. Has applicant any handicaps? State nature Nil

D. Immunizations and Tests (Complete as directed by the school)

Blood Test — Serology	Date	Diphtheria Toxoid (Toxin-antitoxin)	Date	Dosage
	Result		Oct 70	
Tuberculin Test	Date 2-28-73			
	Reaction			
Schick Test	Date	Typhoid-Paratyphoid Vaccine		
	Reaction			
Smallpox Vaccine	Date			
	Reaction			
Tetanus Toxoid	Date Oct 70	Poliomyelitis Vaccine	1966	
	Dosage			
Other (Specify)	Date			

E. Recommendations

1. Do you consider the applicant mentally and physically able to undertake the program in nursing? Yes
2. Do you recommend the applicant for admission to the school? Yes
3. (a) Are you her (his) family physician? Yes (b) How long have you known the applicant? 14 yrs

I have this day given Mrs. Frances B. Davis a careful physical examination and found her (him) in excellent health.

After this examination, do you believe that Mrs Frances B Davis health history and physical examination findings justify her (him) in undertaking the program in professional nursing? Yes

Remarks:

Date 2-28, 1973

Signature C Duncan M.D.

Address Fairmont, N.C.

Pre-entrance Dental Record

School of Nursing Southeastern Community College

Address White Lake, North Carolina, 28472

This is to certify that Mrs Frances Davis

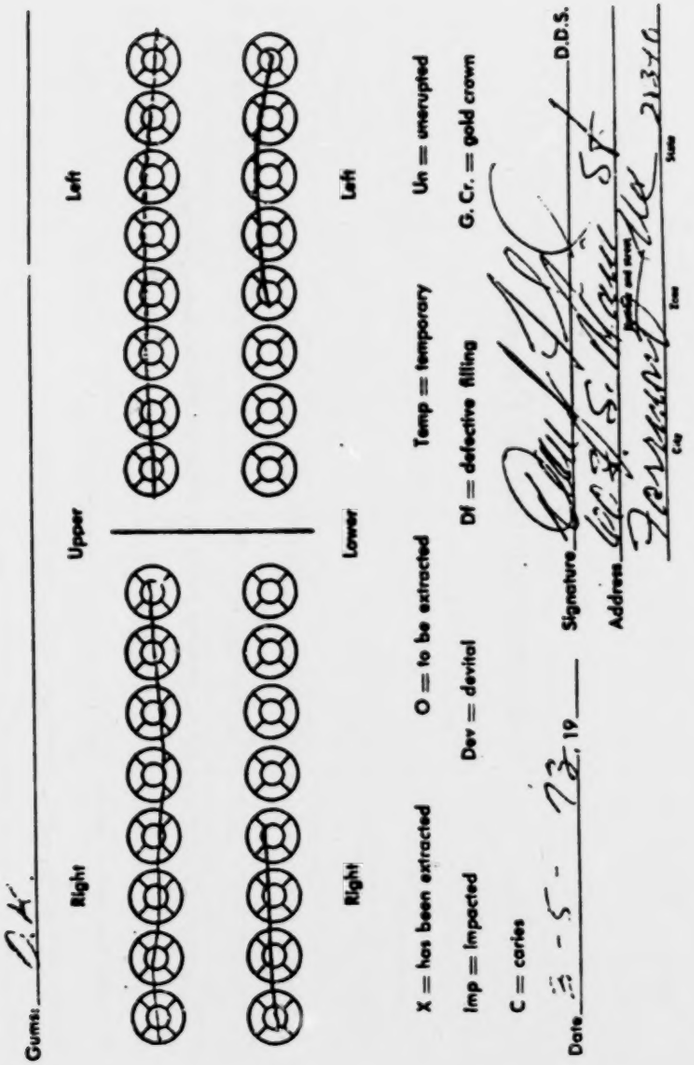
on 5 (Month) 5 (Day) 73 (Year) came to me for an examination of her (his) teeth which I found to be in good condition. I have since then given the necessary treatment.

How often are teeth examined Yr

Care of mouth: good ✓ average _____ poor _____

Teeth: good _____ average ✓ poor _____

Occlusion: good _____ average ✓ poor _____



PLAINTIFF'S EXHIBIT NO. 5

LETTER OF R.C. NORRIS, Registrar of College indicating acceptance for 73-74 school year.

SOUTHEASTERN
COMMUNITY
COLLEGE
WHITEVILLE, NORTH CAROLINA

August 17, 1973

Mrs. Frances Burchette Davis
409 Friendly Street
Fairmont, NC 28340

Dear Mrs. Burchette:

It is our pleasure to notify you that you have been accepted for admission to Southeastern Community College for the 1973-1974 school year. It is our understanding that you would like to enter the Associate Degree Nursing Program in September of 1974. If so, your progress will be evaluated at the end of this year to determine your acceptance into the nursing program. If you are accepted, your program will still require two additional years after this year.

We warmly welcome you to the college; and, in the event you have further questions pertaining to the college, we hope that you will contact us.

Later this month you will be receiving information concerning orientation and registration. If you have any questions or if your plans change, please contact us.

Sincerely,

Roland C. Norris

Roland C. Norris
Registrar

mg

PLAINTIFF'S EXHIBIT NO. 6

MEDICAL REPORT OF BURTON B. KING, AUDIOLOGIST, DUKE UNIVERSITY MEDICAL CENTER.

DUKE UNIVERSITY MEDICAL CENTER

Center for Speech & Hearing Disorders

Address: 409 Friendly Road
Fairmont, N.C.

Husband: A. Ray Davis

Davis, Frances B.

F 4 8785

DOB:8-31-32

DOE: 4-18-74

This patient was seen in the Center for Speech and Hearing Disorders for hearing evaluation and hearing aid evaluation. She was referred to us by Dr. C.G. Pantelakos, Otolaryngologist, in Fayetteville, North Carolina. The otological examination had been performed by Dr. Pantelakos.

According to the patient, she has had a hearing loss on both ears for many years. She stated that her father and her two sisters have significant hearing losses. Furthermore, Mrs. Davis indicated that she had worked in a dry cleaning plant for approximately three years.

The hearing evaluation indicated a bilateral moderately severe sensorineural hearing loss. The audiologist obtained a 52 dB speech reception threshold, 68% speech discrimination on the right ear; and a 52 dB speech reception threshold, 42% speech discrimination on the left ear. These test results indicated that Mrs. Davis suffers from a significant hearing loss and has a better understanding of speech on her right ear. Because of the significant bilateral hearing loss, it was determined that Mrs. Davis could be a satisfactory candidate for a hearing aid.

The hearing aid evaluation procedure consisted of evaluating these patients present hearing aid, and ear level hearing aid, purchased from a mail order house, and new hearing aids from the hearing aid inventory in the Speech and Hearing Center. The hearing aid evaluation was performed in a controlled free field testing environment. The hearing aid evaluation showed that the Lloyd's hearing aid provided little if any help for Mrs. Davis. Therefore, it was recommended that the Lloyd's hearing aid, her present hearing aid,should be replaced. Mrs. Davis performed best with a Beltone Andante (red dot), ear level hearing aid, with the aid worn on her right ear. The Beltone instrument provided a 24 dB speech reception threshold, 62% speech discrimination. It should be noted that Mrs. Davis presents a challenging case for hearing aid use. She has a significant hearing loss with a marked speech discrimination loss and has a severe tolerance problem for amplified sound. Considering these factors, her performance with the Beltone Andante hearing aid should be interpreted as satisfactory. Therefore, the Beltone instrument was recommended for her. In addition to the hearing aid, she should be provided with a custom made ear mold for her right ear.

Although Mrs. Davis performs adequately with the new hearing aid, she was encouraged to continue to use her vision to supplement her hearing. She relies on her vision in helping her understand the speech of those with whom she is associated. The hearing aid improves her hearing level to the outer limits of normal hearing levels.

Thank you for this referral.

Burton B. King
Audiologist

Dr. Kunze
Speach & Hearing Clinic
Duke Hospital
Durham, N.C. 27710

April 23, 1974

Dear Dr. Eunze:

Mrs. Frances Davis of 409 Friendly St., Fairmont, N.C. states that she was seen and examined by you this past week. She has applied for admission to our Associate Degree Nursing Program.

We would appreciate a statement from you regarding her hearing tests with specific information as to whether or not her hearing loss will interfere with her functioning in a safe manner as a student nurse and eventually a graduate nurse.

Our major concern is her apparent inability to hear someone speaking behind her and to the side and she has to ask to have statements repeated a number of times in a face to face conversation.

We would like to know if her hearing test with the audiometer would place her within the normal speech range and also whether or not her hearing loss can be corrected.

An early reply would be appreciated.

Sincerely,

Virginia D. Riggio
Director, Nursing Programs

VDR/nw

PLAINTIFF'S EXHIBIT NO. 7
LETTER OF VIRGINIA D. RIGGIO TO DR. KUNZE, DUKE HOSPITAL.

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Duke University Medical Center
DURHAM, NORTH CAROLINA

DEPARTMENT OF SURGERY
DIVISION OF OTOLARYNGOLOGY

April 25, 1974

POSTAL CODE 27706
TELEPHONE 919-684-6111

Virginia D. Riggio
Director, Nursing Programs
Southeastern Community College
Whiteville, North Carolina 28472

Dear Miss Riggio:

Dr. Kunze has given me your April 23rd letter concerning Mrs. Frances Davis for reply.

She was seen in the Center for Speech and Hearing Disorders for hearing evaluation and hearing aid evaluation and selection. The hearing test indicated a bilateral, sensori-neural hearing loss. She has a moderately severe hearing loss on the right ear and a severe hearing loss on the left ear. In addition to the significant bilateral hearing loss, she has a speech discrimination loss. Stated differently,she has remarkable difficulty in understanding speech because of the distortion in her hearing. However, she understands speech better on the right ear. Thus, that is the ear on which she should wear her hearing aid.

The hearing aid which she has been wearing for some time was an instrument that she received from a mail order company. It was my opinion that this instrument provided little if any help for her. Therefore, a new Beltone Andante (red dot)hearing aid, was recommended for her. This instrument provides her with a significant improvement in her hearing which approaches normal hearing levels. In other words, while she is wearing the hearing aid, she should be able to hear a talker almost

PLAINTIFF'S EXHIBIT NO. 8
LETTER OF BURTON B. KING, AUDIOLOGIST, to VIRGINIA RIGGIO

127a

as well as a person would who has normal hearing. However, to effectively understand speech of that talker she must use her vision to supplement her hearing. It is my opinion that she is an excellent lip reader and performs well above what one would expect for a person with this degree of hearing impairment.

To answer your specific questions, I should state that Mrs. Davis does not possess normal hearing. However, with a hearing aid on her right ear she is very skillful in communicating with other people. If she is allowed to see the talker and use her vision to aid her in interpreting the speech of others, she can perform satisfactorily in most listening situations. While wearing the hearing aid, she is well aware of gross sounds occurring in the listening environment. However, she can only be responsible for speech spoken to her, when the talker gets her attention and allows her to look directly at the talker.

I have attempted to describe to you in a few words my impression of Mrs. Davis and her hearing ability. If I may be of further service to you or to Mrs. Davis please contact me.

Sincerely yours,

Burton B. King
Audiologist

BBK:hh

PLAINTIFF'S EXHIBIT NO. 9

LETTER OF J.A. SCHMIDT, DIRECTOR OF ADMISSIONS, dated 5/6/74, to PLAINTIFF advising she did not qualify for acceptance into the ASSOCIATE DEGREE NURSING PROGRAM.

Southeastern Community College
P.O. BOX 151 WHITEVILLE N.C. 28472 PHONE 910 642 7141

May 6, 1974

Mrs. Frances Davis
409 Friendly Street
Fairmont, NC 28340

Dear Mrs. Davis:

As a part of our selection process, you were requested to have an evaluation of your hearing by a qualified Ear, Nose, and Throat Specialist.

Serious consideration has been given to the results of your hearing evaluation that was conducted at the Center for Speech and Hearing Disorders at Duke, and I regret to inform you that you do not qualify for acceptance in the Associate Degree Nursing Program at Southeastern Community College.

If you have any further questions, please come in and speak with Mrs. Riggio.

Sincerely,

James A. Schmidt

James A. Schmidt
Director of Admissions

JAS:pb

PLAINTIFF'S EXHIBIT NO. 10

LETTER OF VIRGINIA RIGGIO TO MISS MARY McREE, EXECUTIVE DIRECTOR, NORTH CAROLINA BOARD OF NURSING, dated May 14, 1974

SOUTHEASTERN
COMMUNITY
COLLEGE

MAY 16 11 24 AM '74
WHITEVILLE, NORTH CAROLINA 28472

May 14, 1974

Miss Mary McRee, R.N.
Executive Director
North Carolina Board of Nursing
P.O. Box 2129
Raleigh, N.C. 27602

Dear Miss McRee:

Enclosed find letters regarding Mrs. Frances Davis that you had requested in our phone conversation of May 13, 1974.

A statement from the Board of Nursing will be appreciated.

Yours truly,

Virginia D. Riggio

Virginia D. Riggio
Director, Nursing Programs

VDR/nw

Enclosures

PLAINTIFF'S EXHIBIT NO. 11

LETTER FROM MISS McREE, EXECUTIVE DIRECTOR, NORTH CAROLINA BOARD OF NURSING, TO VIRGINIA RIGGIO, dated May 17, 1974.

North Carolina Board of Nursing

P. O. BOX 2129

RALEIGH, NORTH CAROLINA

MARY McREE, R. N.
EXECUTIVE DIRECTOR

TELEPHONE
AREA CODE 919—858-5035

May 17, 1974

Miss Virginia D. Riggio
Director
Nursing Programs
Southeastern Community College
Whiteville, North Carolina 28472

Dear Miss Riggio:

This is in response to your request by telephone on May 13 and restated in your letter of May 14, for our opinion as to the safe involvement of Mrs. Frances Davis in the nursing program considering her hearing difficulty.

We concur with your opinion as stated on the telephone, that Mrs. Davis's hearing disability can preclude her being safe for practice in any setting allowed by a license as an RN, or by a license as LPN. Moreover, we would question the advisability of you and the faculty's assuming responsibility for Mrs. Davis's involvement in patient care as a student in nursing. To adjust patient learning experiences in keeping with Mrs. Davis's hearing limitations could, in fact, be the same as denying her full learning to meet the objectives of your nursing programs.

The basis for our opinions is found in the audiologist's response to you from Duke University on April 25, and the relationship of this response to expectations of nurses in patient care, "If she is allowed to see the talker and use her vision to aid her in interpreting the speech of others she can perform satisfactorily in most listening situations. While wearing the hearing aid, she is well aware of gross sounds occurring in the listening environment; however, she can only be responsible for speech spoken to her when the talker gets her attention and allows her to look directly at the talker."

Both you and I can identify innumerable patient care situations in which this lady's abilities as defined in the quoted paragraph would be inadequate to respond to the patient needs; in fact, it would be inadequate for her probably to identify all of the patient's needs for which she would be accountable or even to pick up some clues to situations that could be quite critical to the point of life, death, situations.

Certainly, it must be frustrating to an individual, as Mrs. Davis, who according to your identification is very intelligent and has a determined interest to pursue nursing not to be able to fulfill this goal; however, how much more frustrated she might become should she be enrolled in the program and experience a different kind of trauma in terms of missing some very important clues in patient care, or even in experiencing a wrong measure of patients needs.

I believe that you indicated on the telephone that there are other career avenues open to her which would capitalize upon her abilities and in which the hearing disability would not be a significant barrier as it could be in

nursing. We would urge the college in counselling Mrs. Davis to alter her career goal, as we do not believe, on the basis of facts we have now, that Mrs. Davis would either be safe for herself, or for patients, or for faculty to pursue a nursing education program.

We will be interested to know what route Mrs. Davis does elect in terms of an alternate option.

Sincerely,

Mary McRee

(Miss) Mary McRee, R. N.
Executive Director

McR:ep

PLAINTIFF'S EXHIBIT NO. 12

REPORT OF GRADES FOR 73-74 SCHOOL YEAR - SOUTHEASTERN COMMUNITY COLLEGE.

DAVIS, Frances B. Date of Admission: Fall, 1973

FALL, 1973

Title of Course		Grade	Qtr. Hrs.	Qual. Pts.
FRESHMAN ENGLISH	Eng 101	C	4	8
GENERAL BIOLOGY	Bio 101	C	4	8

WINTER, 1973

Title of Course	Grade	Qtr. Hrs.	Qual. Pts.
BIO 204	B	5	15
PSY 201	B	5	15
ENG 102	B	3	9

SPRING, 1974

Title of Course	Grade	Qtr. Hrs.	Qual. Pts.
BIO 205	C	5	10
ENG 103	B	3	9
PSY 206	C	3	6

PLAINTIFF'S EXHIBIT NO. 13

LETTER FROM DEAN MOORE TO MISS MARY McREE, STATE BOARD OF NURSING

June 26, 1974

Miss Mary McRee, R. N.
Executive Director
North Carolina Board of Nursing
P. O. Box 2129
Raleigh, North Carolina 27600

Dear Miss McRee:

At the request of Mrs. Frances Davis, we are reconsidering her application for admission to our Associate Degree Nursing Program. You responded to our concerns about Mrs. Davis' application by letter on May 17, 1974 to Miss Virginia Riggio.

Our question at this time is as follows: If Mrs. Davis were admitted and subsequently successfully completed our program, would her hearing difficulty (as described in Mr. Burton King's report and referred to in your May letter) prevent her from being licensed as an R.N. by the North Carolina Board of Nursing? Your response to this question will be carefully considered as further decisions are made relative to Mrs. Davis' application.

Thank you very much for your assistance.

Sincerely yours,

Dan W. Moore
Dean for Student Development

DWM/mg

PLAINTIFF'S EXHIBIT NO. 14

LETTER FROM MISS MARY McREE, STATE BOARD OF NURSING TO DEAN MOORE

North Carolina Board of Nursing

P. O. BOX 2129

RALEIGH, NORTH CAROLINA

July 14, 1974

[illegible], R. N.
[illegible] DIRECTOR

TELEPHONE
AREA CODE 919-[illegible]

138a

Mr. Dan W. Moore
Dean for Student Development
Southeastern Community College
Whiteville, North Carolina 28472

Dear Mr. Moore:

In response to your letter of June 26, we reiterate our opinion given in our letter addressed to Miss Virginia Riggio on May 17. We, therefore, refer you again to that letter in which we enumerated several concerns. Specifically, one requirement for eligibility to write the State Board Test Pool Examination leading to licensure as registered nurse (or to licensed practical nurse where appropriate) includes evidence that an applicant has no limitations, physically, emotionally, or mentally, to prevent the applicant from practicing nursing, after licensure, without restriction of any kind on the license. From the facts presented through Miss Riggio's letter and the audiologist's report of Mrs. Davis's hearing capacity, it is our opinion that Mrs. Davis has hearing limitations which could interfere with her safely caring for patients. This very situation, also in our opinion, could be highly frustrating to Mrs. Davis.

Again, from our letter to Miss Riggio of May 17 "...we do not believe on the basis of facts we have now that Mrs. Davis would either be safe for herself, or for patients, or for faculty to pursue a nursing education program."

We cannot, at this time, predict eligibility or ineligibility for the licensing examination should Mrs. Davis enroll in, and be allowed to complete the program some several years hence.

139a

We reiterate that each applicant for the licensing examination must provide evidence that he/she is able, if licensed, to practice nursing as legally defined without any restriction.

Sincerely,

[illegible]

(Miss) Mary McRee, R.N.
Executive Director

MM:EP

cc: Miss Virginia Riggio

PLAINTIFF'S EXHIBIT NO. 15

LETTER FROM MRS. W. JOHNSON, DIRECTOR OF NURSING, SOUTHEASTERN GENERAL HOSPITAL to DR. McCARTER, PRESIDENT OF SOUTHEASTERN COMMUNITY COLLEGE, dated July 1, 1974.

Southeastern General Hospital

LUMBERTON, NORTH CAROLINA 28358

July 1, 1974

Dr. McCarter, President
Southeastern Community College
Whiteville, North Carolina

Re: Frances B. Davis

Dear Dr. McCarter:

Mrs. Davis and I have discussed her hearing problem and she is very aware of the areas where she could function

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adequately. On a busy, noisy unit it would be difficult but in areas such as long term care, a doctor's office or even industrial she could do well.

I do not believe that I can truthfully state that she would not be able to function in any area of nursing with her present determination to continue her education.

Sincerely,

Wilhelmina S. Johnson

(Mrs.) Wilhelmina S. Johnson
Director of Nursing Service

WSJ:y

141a

PLAINTIFF'S EXHIBIT NO. 16

LETTER FROM DEAN MOORE TO MRS. JOHNSON, dated July 8, 1974.

July 8, 1974

Mrs. Wilhelmina S. Johnson
Director of Nursing Service
Southeastern General Hospital, Inc.
P. O. Box 1408
Lumberton, North Carolina 28358

142a

Dear Mrs. Johnson:

Dr. Ronald McCarter asked that I reply to your July 1, 1974 letter to him concerning Mrs. Frances B. Davis. In order to properly reconsider Mrs. Davis' application to our Associate Degree Nursing Program, it would be helpful if you, as Director of Nursing Service at Southeastern General Hospital, would respond to the following question:

> If Mrs. Davis were a graduate of our Associate Degree Nursing Program and licensed as a Registered Nurse by the North Carolina Board of Nursing, would you employ her at Southeastern General Hospital? (It would be helpful to us if you can also elaborate on the conditions or circumstances under which she would or would not be employed.)

If you are not able to answer this question at this time we would appreciate a letter to that effect. Thank you for your continued assistance as we attempt to assist Mrs. Davis in her educational and occupational planning.

Sincerely yours,

143a

Dan W. Moore
Dean for Student Development

DWM/tg

CC Dr. W. R. McCarter

PLAINTIFF'S EXHIBIT NO. 17

LETTER FROM MRS. JOHNSON TO DEAN MOORE, dated July 10, 1974.

July 10, 1974

144a

Mr. Dan W. Moore
Dean for Student Development
Southeastern Community College
Whiteville, North Carolina

Re: Frances B. Davis

Dear Mr. Moore:

I stated in my letter of 7-1-74 that I would employ Mrs. Davis in our Skilled Nursing Facility as an R.N.

---

if I had a vacancy. At the present time I have only one position on this Unit and I do not expect the person in this position to change but we have the new Methodist Home that will be built in the near future that will have positions that I feel she can handle.

Mrs. Davis could also handle the night assignment on our Post Partum Unit without difficulty after she is registered.

145a

If this does not clarify the situation please let me know.

Sincerely,

Wilhelmina S. Johnson

(Mrs.) Wilhelmina S. Johnson
Director of Nursing Service

PLAINTIFF'S EXHIBIT NO. 18

LETTER OF DEAN MOORE TO MRS. FRANCES DAVIS, dated August 8, 1974.

SOUTHEASTERN
COMMUNITY
COLLEGE

WHITEVILLE, NORTH CAROLINA 28472

Student Development Center

Mrs. Frances B. Davis
409 Friendly Street
Fairmont, North Carolina 28340

146a

Dear Mrs. Davis:

At our last meeting we discussed the relationship of your admission to the Associate Degree Nursing Program at Southeastern Community College and your possible licensing by the North Carolina Board of Nursing as a Registered Nurse; your employability, if licensed as a Registered Nurse; and the willingness of our nursing faculty to accept the responsibility of your supervision during your clinical experiences as a student. Since that meeting, we have contacted the North Carolina Board of Nursing; Southeastern General Hospital in Lumberton, North Carolina (as a potential employer); and our nursing faculty. A summary of the content of these communications follows:

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1) The North Carolina Board of Nursing requires for eligibility for taking the State Board Test Pool Examination "that an applicant has no limitations, physically, emotionally, or mentally, to prevent the applicant from practicing nursing after licensure without restrictions of any kind on the license." After reviewing the audiologist's report and making reference to the fact that your hearing limitations could interfere with your safely caring for patients, the board reiterated an earlier comment by writing "...we do not believe on the basis of facts we have now, that Mrs. Davis would either be safe for herself, or for patients, or for faculty to pursue a nursing education program."

2) Letters from Southeastern General Hospital indicate that if you were a Registered Nurse, you would be considered for employment there in areas in which your hearing limitations would not be a factor. Communications from hospital personnel specified areas in which your services could and could not be utilized.

3) On the basis of the audiologist's report; the reservations noted earlier from the North Carolina Board of Nursing; and conferences with you, in which your hearing difficulty was noted and discussed; members of the Southeastern Community College Nursing faculty are

not willing to accept you as a student in the Associate Degree Nursing Program. A basic inconsistency which they noted is the fact that your hearing limitation would require restricted or limited clinical experiences as a student and the North Carolina Board of Nursing requires that no limitations be placed on the possible licensure of applicants.

Thank you for your interest in Southeastern Community College. As we stated earlier, we would be happy to help you identify and work toward occupations in the field of health in which your hearing limitation would not be so critical as criteria for success and safety.

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Sincerely yours,

Dan W. Moore

Dan W. Moore
Dean for Student Development

DWM/mg

PLAINTIFF'S EXHIBIT NO. 19

LETTER FROM E. L. WILLIAMSON, counsel for Defendant, TO PHILIP A. DIEHL, counsel for Plaintiff, CONCERNING THE ADMISSION OF MRS. DAVIS TO THE COLLEGE, dated June 27, 1975.

WILLIAMSON & WALTON
ATTORNEYS AND COUNSELLORS AT LAW
136 WASHINGTON STREET
WHITEVILLE, NORTH CAROLINA
28472

E. L. WILLIAMSON
ELTON H. WALTON, III

AREA CODE
TELEPHONE

June 27, 1975

149a

Mr. Philip A. Diehl
Moses & Diehl
Attorneys at Law
127 West Edinborough Avenue
Raeford, North Carolina 28376

Re: Mrs. Frances B. Davis

Dear Mr. Diehl:

Your letter of June 23, 1975, addressed to Mr. James A. Schmidt, Director of Admissions, Southeastern Community College, has been referred to us for reply.

As requested, a copy of the Admission Criteria for the Associate Degree Nursing Program is enclosed for your information. Particular reference is made to "medical record" under the paragraph dealing with selection process since this aspect of Mrs. Davis' application is significant.

Mrs. Davis has in her possession and I presume has shown you an extensive amount of correspondence concerning her hearing defect and the evaluation of this impairment as it may affect her ability to function as a nurse. The college has gone to extensive efforts to determine the suitability of Mrs. Davis to be enrolled in the nursing program and the assertion that Southeastern Community College has arbitrarily chosen to exclude Mrs. Davis from the Associate Degree Nursing Program is unjustified. The college was able to admit only 45 students in the ADN Program from approximately 130 applications in 1974 and has approximately 134 applications so far for the 1975 program. Since it appeared from Mrs. Davis' application and her college work that the impairment of her hearing was a major factor to be given serious consideration, the college chose to involve the North Carolina Board of Nursing and an audiologist in the Speech and Hearing Clinic, Duke Hospital, Durham, North Carolina, and Director of Nursing Service, Southeastern General Hospital, Lumberton, North Carolina. Again, these things were done to assure utmost fairness and objectivity in determining the suitability of Mrs. Davis for this special study. If you have not already done so, please request from Mrs. Davis letters which were sent her including:

Letter dated May 17, 1974, from Miss Mary McRee, R.N., Executive Director, North Carolina Board of Nursing, Raleigh, North Carolina.

Letter dated June 26, 1974, from Dan W. Moore, Dean for Student Development, Southeastern Community College, to Miss Mary McRee.

Letter dated July 14, 1974, from Miss Mary McRee to Mr. Dan W. Moore.

Letter dated April 23, 1974, from Virginia D. Riggio, Director Nursing Program, Southeastern Community College to Dr. Kunze, Speech & Hearing Clinic, Duke Hospital, Durham, North Carolina.

Letter dated April 25, 1974, from Burton B. King, Audiologist, Duke University Medical Center to Virginia D. Riggio.

Letter dated July 1, 1974, from Mrs. Wilhelmina S. Johnson, Director of Nursing Services, Southeastern General Hospital, Inc., to Dr. McCarter, President, Southeastern Community College.

Letter dated July 8, 1974, by Dan W. Moore, Dean for Student Development to Mrs. Wilhelmina S. Johnson.

Letter dated July 10, 1974, from Mrs. Wilhelmina S. Johnson to Mr. Dan W. Moore.

These letters are extremely important as they deal specifically with the hearing defect of Mrs. Davis and the inadvisability of her involvement in patient care as a student in nursing because of this impairment.

I would be happy to confer with you further regarding this matte if necessary, but wish to advise that the college will not under the circumstances of this case reconsider its decision in denying Mrs. Davis admission to the Associate Degree Nursing Program.

Very sincerely yours,

WILLIAMSON & WALTON

By: [signature]

ELW:cs
Enclosure
cc: Dr. W. Ronald McCarter

PLAINTIFF'S EXHIBIT NO. 20

RENEWAL OF LICENSE FOR 1976-77 AS LICENSED PRACTICAL NURSE BY THE N.C. STATE BOARD OF NURSING, ISSUED TO FRANCES DAVIS

1976-1977 LICENSE TO PRACTICE AS A LICENSED PRACTICAL NURSE IN THE STATE OF NORTH CAROLINA

CERTIFICATE NUMBER 09581

EXPIRATION DATE DEC. 31, 1977

FRANCES BURCHETTE DAVIS
409 FRIENDLY ST
FAIRMONT N C

Renewal
No.05404

[signature]
SIGNATURE

[signature]
EXECUTIVE DIRECTOR
NORTH CAROLINA BOARD OF NURSING

DEFENDANT'S EXHIBIT NO. 1

OVERALL ESTIMATE OF SUITABILITY OF MRS. FRANCES DAVIS FOR THE ASSOCIATE DEGREE NURSING PROGRAM MADE BY MRS. P. ASHLEY on 4/25/74 AS AN INTERVIEW FOR ADMISSION, ALONG WITH NOTES OF MRS. WATTS.

Overall estimate of suitability for ADN Program.
Low 1 2 3 4 5 6 7 High
Academic O.K. - adjustment (?)
Date Apr 25 '74

Name: Mrs. Frances Davis
Address: Fairmont

Name of interviewer: P. Ashley.

Personal appearance	Low	1	2	3	(4)	5	High
Poise		1	2	3	(4)	5	
Ability to communicate		(1)	2	3	4	5	hearing difficulty
Self assurance		1	2	3	4	5	

Personality
shy ___ withdrawn ___ → to neutral ✓ ___ outgoing ___

154a

Attitude
Negative ✓ → Neutral ✓ ___ Positive ___ denies anxiety ? hearing prob. or defensive — very difficult to interview

Concept of nursing and her expectations
O.K - L.P.N.

Requested repeat of almost all statements - though she was sitting fore to face - Said my voice was too low - Prot cont' after I allayed to be concerned

Review Scores on C.O.P.

Year 2000	Letter Groups
Below 35 - weak	* Below 42% - weak
Above 35 - strong Nat. %ile_____	* Above 42% - strong Nat. %ile_____

To be tested daily May —

Students in strength range/good probability of success in ADN Program. She will have problems — (Not currently pursuing Nurs. Career —)

Student's estimate of her own ability to take standardized tests

poor ___ average ___ strong ___ Voiced hope she would do well

Health problems personal and family
(allergies, medications, etc.)
Hearing - has 1 son graduating from college - Heart cont'l Surgery not completely successful - Iron anemia

Explore time will have for studies and clinical experiences.
Alternate career plans discussed. adequate - 3 sons - College next yr - does now arranging day cleaning estab - plans to

155a

Any indications that she will pursue.
determined - will have difficulty re Long Hours

Administer questionnaire * Emphasize merely to gather data for future use.

Please complete interview guide before you go to the next interview.

SOUTHEASTERN COMMUNITY COLLEGE

ADMISSIONS INTERVIEW FORM

Date of Interview 4-25-78

Name: Frances P. Davis

Address 409 Friendly St.
Fairmont, N.C.

Previous School (s) attended:

H.S. Philadelphus H.S.

Date of Graduation: '50

Other: P.S.U. / R.T.I 2 Years

Work Exp: LPN - S.E. Gen

Date of Birth 8-31-32

PROGRAM INTEREST: (Circle One) C.T. (TECH) V. Undecided

Specific Interest: ADN

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Date to Begin: Fall Full Time ✓ Part Time _____

Financial Aid Status: _____Will apply; _____Will not apply

Recommendations:

Developmental	Credit	Needs to Remain Full Time For:
Eng. 94 _____	Advanced Math (112-113)_____	_____Soc. Secruity
Eng. 97 _____	Science:	_____Veterans Aid
Mat. 98 _____	Bio._____	_____Financial Aid
Sci. 97 _____	Chem._____	_____Other:_____
ASP_____	Phys. Sci._____	_____
	Courses Exempted	
	Psy. of Learning_____	
	Phys. Ed. _____	

Interviewer: Watts

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DEFENDANT'S EXHIBIT NO. 2

CVERALL EVALUATION OF SUITABILITY FOR ADN PROGRAM BY ANNIE ODOM dated 3/18/74.

...bility for ADN Program.
... 1 2 3 4 5 6 7 High

Date 3/...

..., Frances

...

...of Interviewer: Odom

Personal appearance Low 1 2 (3) 4 5 High

Poise 1 2 (3) 4 5

Ability to communicate 1 (2) 3 4 5

Self assurance 1 2 (3) 4 5

Personality may be overconfident
shy ___ withdrawn ___ neutral ✓ outgoing ___

Attitude
Negative ___ Neutral ✓ Positive ___

158a

Concept of nursing and her expectations - LPN - worked at SEGH 1966 - (69-70) 3½ yrs - private duty. Desires to go to Fairmont - Hopes about 1½ years to RN upon completion of ADN program.

Review Scores on C.O.P.

Year 2000		Letter Groups	
Below 35 - weak		Below 42% - weak	
Above 35 - strong	Nat. %ile_____	Above 42% - strong	Nat. %ile_____

Students in strength range good probability of success in ADN Program.

Student's estimate of her own ability to take standardized tests

poor ___ average ✓ strong ___

Health problems personal and family. (allergies, medications, etc.) hearing difficulty - wears hearing aid. No allergies - no meds now - (*) see back

Explore time will have for studies and clinical experiences.

Alternate career plans discussed - shorthand at family dry Career business. Father ill - takes care of him -

159a

Any indications that she will pursue. No -

Administer questionnaire * Emphasize merely to gather data for future use.
Please complete interview guide before you go to the next interview.

160a

* Her hearing impairment is ... to repeat what I said several times during the interview I discussed this with her example: patients may need to repeat - as obviously I did - I do not recommend her for the ADN program -

Annie Odom -

* She was really vague about working as RN - even if she goes through program. She is not now working as LPN -

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DEFENDANT'S EXHIBIT NO. 3

COLLEGE GRIEVANCE PROCEDURE

GRIEVANCE PROCEDURE

The procedure outlined here is open to the student to seek justice if he feels that he is being or has been, in any way, treated unfairly in his association with Southeastern Community College, other than grievances which are covered under the Student Code of Conduct. The student shall initiate any grievance by mid-term of the quarter following that in which the grievance occurred.

A student who has a grievance should first discuss it with the person who is the source of the grievance. However, if the student feels that he cannot meet with this person, it is suggested that he discuss his grievance with a counselor. The counselor will help the student think through the grievance and, if the student desires, assist him in developing a written statement of the grievance to be presented to the student's dean and to the appropriate dean or superior of the staff member, if different from the student's dean. The dean or deans will study the problem, gather evidence, and render a decision. If the dean or deans are unable to reach a decision the grievance will be referred to the Grievance Committee.

Either the student or the staff member may appeal the dean's decision to a special grievance committee. The Grievance Committee shall consist of three students, two faculty members and two administrators. The students, two from the College Parallel Division and one from the Technical - Vocational Division, will be appointed by the Student Senate. The faculty members shall be elected by the faculty at large. The administrators shall be the Vice President, who will chair the committee with voting power, and the Dean for Student Development.

No member of the Grievance Committee shall participate in any occasion when he is directly involved as an initiator or a source of a grievance. The committee shall hear both sides of the grievance and render a decision by majority vote. The hearing will be closed to the public and taped. The tape(s) may be made available to the public upon a "need to know" basis.

If either party of the grievance wishes, he may appeal the decision of the Grievance Committee to the President.